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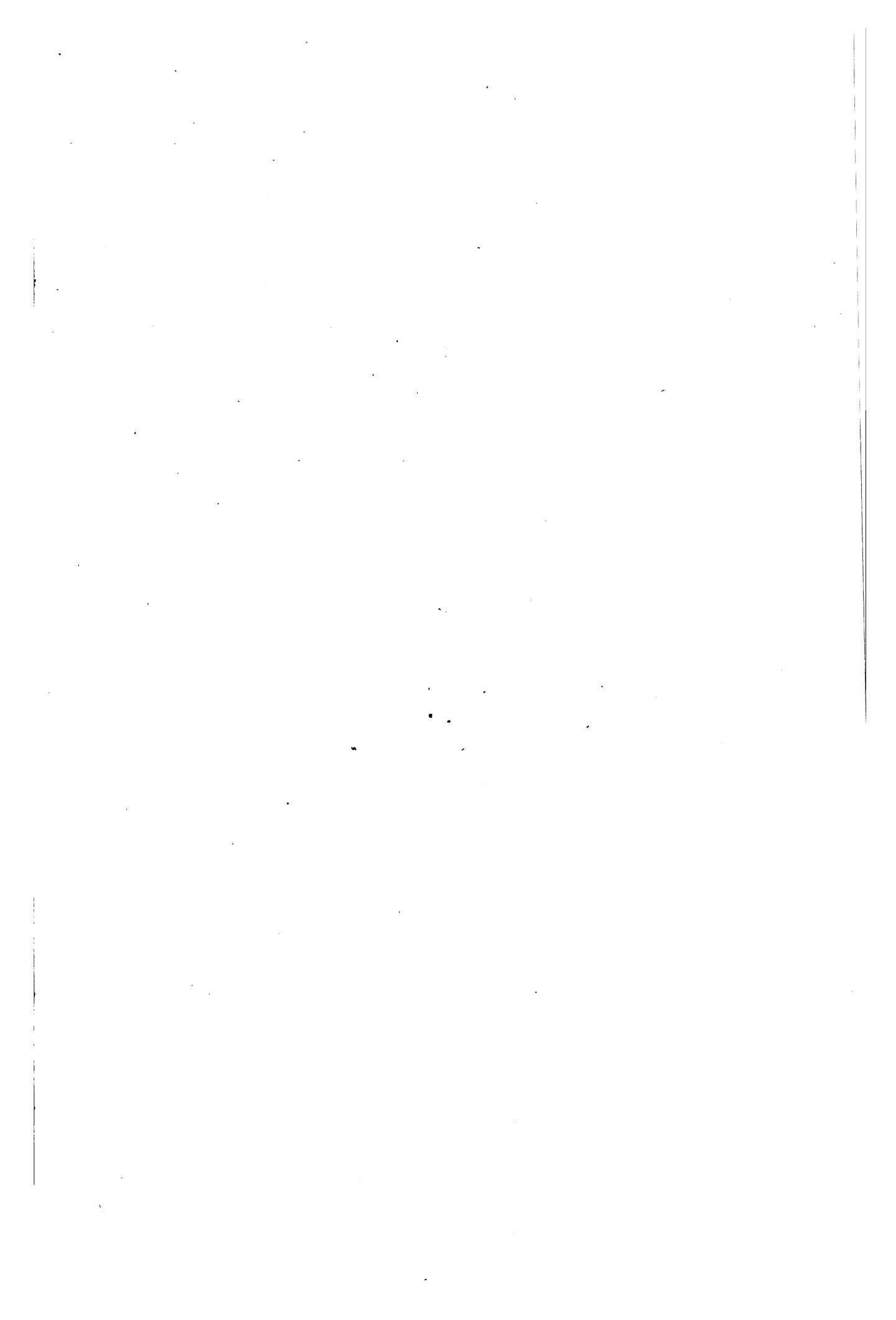
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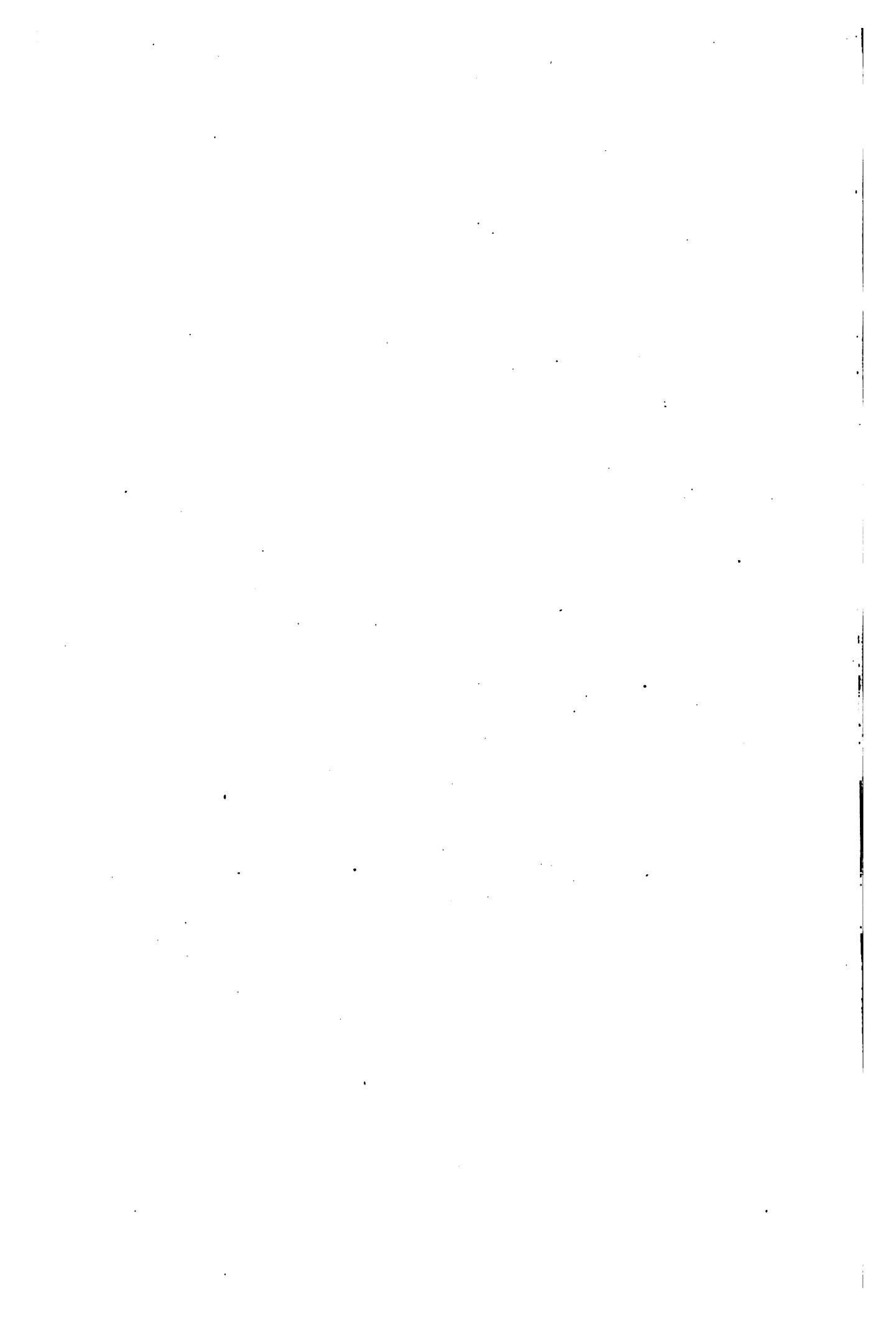
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## DIGEST OF THE LAW

RELATING TO

# Commons,

AND

# Open Spaces,

INCLUDING

# Public Parks, and Recreation Grounds:

WITH

VARIOUS OFFICIAL DOCUMENTS; PRECEDENTS OF BY-LAWS AND REGULATIONS;

The Statutes in full:

AND BRIEF NOTES OF LEADING CASES.

BY

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1877.

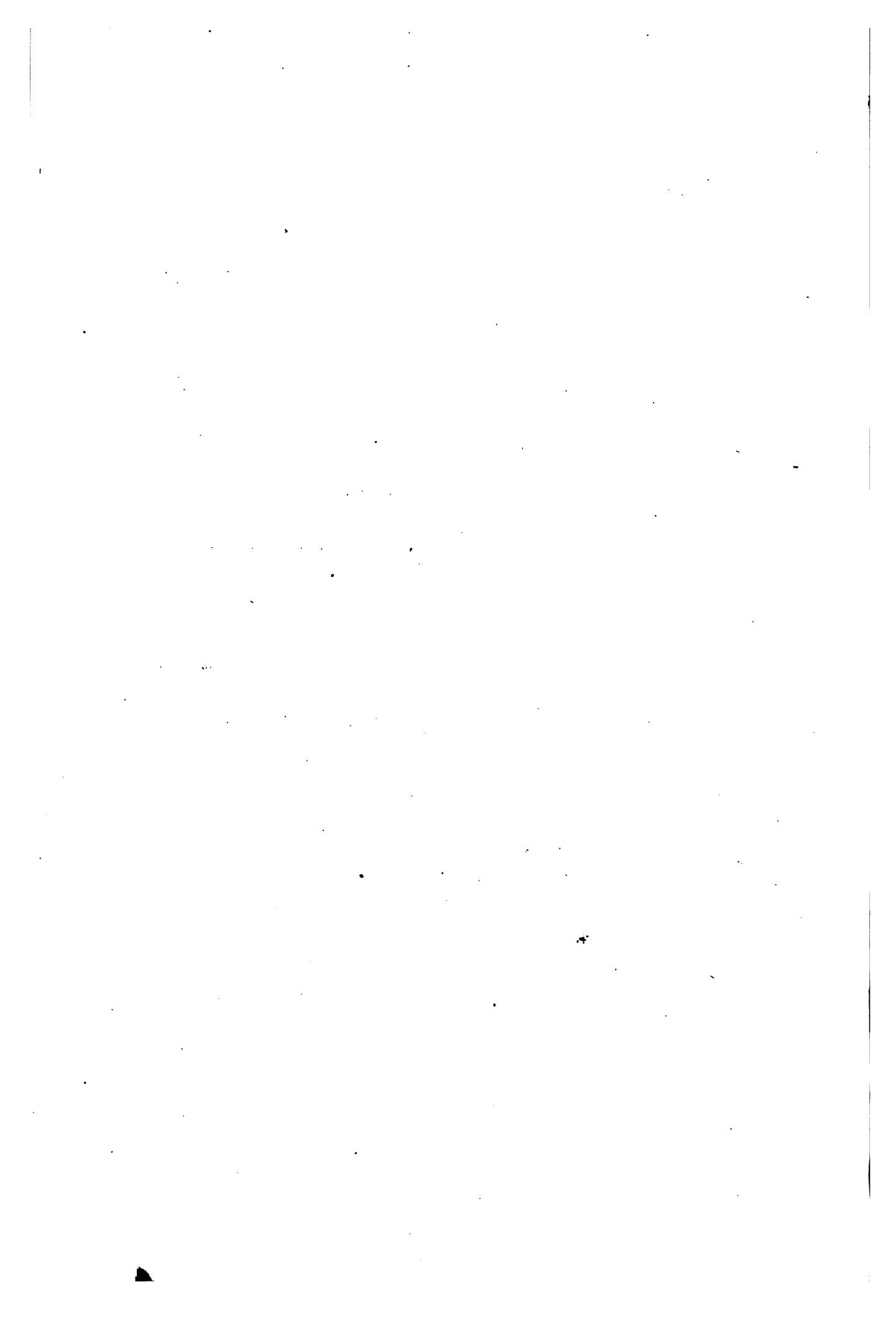


Printed by V. T. SUMFIELD, Station Street, East-Bourne.

Inscribed to  
THE RT. HON. R. A. CROSS, M. P.,

SECRETARY OF STATE FOR THE HOME DEPARTMENT,

WHO AS THE AUTHOR OF THE "COMMONS ACT," THE "ARTIZANS DWELLINGS ACT," AND OTHER PRACTICAL  
MEASURES OF SIMILAR CHARACTER HAS WISELY SHOWN HIMSELF OF OPINION THAT SOCIAL  
AND SANITARY LEGISLATION IS CALCULATED TO BE FAR MORE CONDUCIVE TO THE  
WELFARE OF THE MASSES THAN MERE POLITICAL CROTCHETS.



## Preface.

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THE progress of Public Opinion generally, and the passing of Mr. Cross's "Commons Act," in particular, have given a stimulus to those Municipal Reformers who for many years past have been urging the annually increasing importance of preserving as "lungs" for the inhabitants of our large towns all the available Commons and open spaces which exist, and of putting into force the Acts which facilitate the establishment of such, where none exist.

In the belief that it would be a convenience to many Town Clerks, and Clerks of Improvement Commissioners and Local Boards to have the recent Statutes respecting Commons and open spaces, &c., collected into one volume, I have prepared the present work, which resembles, in its plan, so far as may be, my well-known *Digest of the Law relating to Public Health*, and seems to need no further preface.

G. F. C.

1, Cloisters, Temple.

August, 1877.



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# PART I.

## Digest of Statutes.

### CHAPTER I.

#### "THE COMMONS ACT, 1876," ANALYSED.

OF the various Acts with which it is intended to deal in the present volume the most recent is also the most important, namely, the "Commons Act, 1876," and under that Act will probably for some years be done whatever is done in the way of protecting open spaces for Recreation purposes. There are, however, some other Acts on the Statute Book which must not be passed over, though their relative importance is not great.

39 & 40 Vict. 56.

(2.) The "Commons Act, 1876," opens with a long preamble, which in substance savours very much of a confession that Parliament has been too free hitherto in granting facilities for the inclosure of Commons and waste lands, and that more particular attention should, in future, be given to making provision for the health, comfort, and convenience of the inhabitants who live in the neighbourhood of the Commons proposed to be dealt with under the Act.

(3.) The Act is administered by the Inclosure Commissioners for England and Wales, and to them all applications have to be made. The system of Provisional Orders, which has come so much into vogue of late years in connection with the functions of the Local Government Board and the Board of Trade, is made applicable to proceedings under the Act.

39 & 40 Vict. 56,  
§ 6.

(4.) Such proceedings may be taken either for (1) the "regulation" of a Common ; or (2) for the inclosure of a Common or of parts of a Common ; or (3) for the regulation of part of a Common and for the inclosure of the residue. In the last-named case the parts of a Common are to be treated as if they were separate Commons, except that the boundaries proposed for the parts to be regulated and the parts to be inclosed may be modified by the Provisional Order. The Commissioners are not to carry into effect any application until it is

made to appear to them that the Persons making it represent at least one-third in value of the interests in the Common to be affected by the proposed Provisional Order.

<sup>39 & 40 Vict. 56,</sup> § 8. (5.) A Provisional Order for the regulation of a Common may provide generally or otherwise for the "adjustment of rights" in respect of such Common, or for the "improvement" of such Common, or for either of such purposes.

<sup>39 & 40 Vict. 56,</sup> §§ 4-5. (6.) Very elaborate definitions are furnished by the Act as to what is meant by the terms "adjustment of rights," and the "improvement" of a Common. It is scarcely possible to summarise these particulars ; the Act itself must be referred to.

<sup>39 & 40 Vict. 56,</sup> § 7. (7.) Directions are given for the guidance of the Inclosure Commissioners in determining whether a Provisional Order in respect of a Common is expedient. They are to take into consideration the question whether the subject of the application will, if carried out, be for the benefit of the neighbourhood, and they are to insert such of the terms and conditions suggested in the Act (described as "Statutory Provisions for the Benefit of a Neighbourhood") which they deem applicable to the case. The provisions suggested are such as cannot fail to give satisfaction to all who are interested in promoting the health, recreation, and general edification of the masses who are ordinarily compelled to pass most of their time pent up in crowded, and, it may be, unhealthy Houses, in large Towns. The following is an outline of what the Commissioners may do under the present head :— Secure free access to particular points of view ; preserve particular trees or objects of historical interest ; reserve (where no recreation ground is set out) a privilege of playing games or enjoying other species of recreation ; establish commodious roads and paths ; do any other thing to be specified which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood.

<sup>39 & 40 Vict. 56,</sup> § 8. (8.) There are obvious reasons why the preservation of open spaces is in rural districts a matter of less importance than in the neighbourhood of Towns. Accordingly we find that in the case of what are called "Suburban Commons," which are defined to be Commons, situate wholly or partly in a Town, or within 6 miles thereof, special precautions are to be taken in order to prevent such Commons being dealt with under the Act without full regard being paid to the interests of the inhabitants. Previous to the customary Inquiry, always to be held preparatory to the issue of a Provisional Order, the Urban Sanitary Authority, having jurisdiction over the Town in or near which the Common lies, is entitled to notice, and it may appear<sup>(a)</sup> before the Assistant Commissioner at the Local Inquiry, and make representations as to the expediency or inexpediency of any application, regard being had to the health, comfort and convenience of the inhabitants of the Town over which such Authority has jurisdiction, and it may suggest special provisions. This same privilege of being heard also

(a) By its clerk, or by any officer authorised. See 38 and 39 Vict. 55, § 259.

attaches to an Urban Authority so as to enable it to appear before the Inclosure Commissioners themselves.

(9.) The Powers conferred on Urban Sanitary Authorities with respect to Suburban Commons are very extensive, and are set out at great length. An Urban Authority may, with the sanction of the Inclosure Commissioners, agree to contribute out of its funds to the maintenance of any Recreation Grounds, or of paths or roads, or, in the very comprehensive words of the Act, for the doing of "any other matter or thing for the benefit of their Town, in relation to the Common to which such application relates." Such an Authority may buy up the rights of Commoners in order to secure greater privileges for its Town. It may also acquire by gift, and hold without license in Mortmain on trust for the benefit of its Town, any Suburban Common within the Act, and any rights in such Common. Likewise it may purchase and hold, with a view to prevent the extinction of the rights of Common, any saleable rights in Common, or any tenement of a Commoner which has rights annexed thereto.

(10.) An Urban Authority may also, with the consent of Persons representing at least one-third in value of interests in a Suburban Common proposed to be affected by a Provisional Order, apply to the Inclosure Commissioners for the regulation and improvement of such Common. If the Inclosure Commissioners deem such a step advisable, having regard to the benefit of the neighbourhood as well as to private interests, an Urban Authority may be invested with such powers of management or other powers as may be expedient.

(11.) The 8th section closes with some miscellaneous practical provisions as follows:—Expenses incurred by an Urban Authority may be defrayed as expenses under the "Public Health Act, 1875;" a "Town" means any municipal Borough, Improvement Act District, or Local Board District, having not less than 5000 inhabitants according to the last published Census; <sup>(a)</sup> distances are to be measured in a direct line from (1) the Town Hall; or (2) if there is no Town Hall, from the Cathedral or Church, if there is only one Church; or (3) if there is more than one Church, from the principal Market Place—in every case to the nearest point of the Suburban Common. <sup>(b)</sup> When part only of a Common is situated within the statutory distance of 6 miles of a Town, such part is for the purposes of § 8 of the Act to be deemed a Common by itself, distinct from the part situated beyond the 6-mile limit.

(12.) The Act prescribes various rules for the guidance of persons applying to the Inclosure Commissioners for the issue of Provisional Orders; for the Regulation of Local Inquiries held under the Authority of the Commissioners; and with respect to the issue of Provisional Orders. All the details must be gathered by a perusal of

(a) It is not at all clear whether the limitation of 5000 applies generally or only to the Local Board Districts. As the Act is punctuated it applies generally.

(b) This is clearly what is intended, but it is not so expressed.

the Act itself, for they cannot well be summarised, and persons wishing to put the Act in force must be very careful to observe them. It will be sufficient for the present purpose to say that the procedure before the Inclosure Commissioners and their Assistant Commissioners resembles in all its leading features the procedure before the Local Government Board and the Inspectors of that Board, with which most Local Authorities are more or less familiar.

(13.) The Act does not contain many allusions to financial matters, and it may indeed be open to doubt whether sufficient provision has been made in this respect. Expenses connected with Commons in Urban Districts have already been dealt with. In any case a Provisional Order for the regulation of a Common may provide for the raising from time to time by such persons interested in the Common, and for such amounts as the Commissioners think fit, of money to be applied towards the improvement or protection of such Common. The money may be raised either (1) by rates levied on the persons who or in respect of the property which will be benefited, or be principally benefited, by such improvement or regulation; or (2) by means of the sale of any outlying or other small portion, not exceeding in the whole one-fortieth part<sup>(a)</sup> of the total area of the Common.

*39 & 40 Vict. 56.  
§ 14.*

(14.) Where compensation has to be paid for any restriction, modification, or abolition of rights in pursuance of a Provisional Order for the regulation of a Common, the amount of such compensation shall, subject to the Order, be deemed to be expenses of and incidental to the regulation of the Common, and may be defrayed accordingly.

*39 & 40 Vict. 56.  
§ 18.*

(15.) There is a strong prohibition in the Act against making excavations in Commons regulated under the Act in search of gravel, sand, stone, or other materials for Highway repairs in places not set apart for the purpose, except of course with the consent of the persons who stand in the position of Conservators of the Common. But if such consent is not obtainable, it appears that two Justices in Petty Sessions may grant permission for the removal of materials on such conditions as to mode of working and restitution of surface as they may deem expedient.

*39 & 40 Vict. 56.  
§ 20.*

(16.) For breach of the provisions of the Act in the shape of illegal inclosures or encroachments, or for any nuisances impeding the exercise of any right of Common arising after the passing of the Act the aid of the County Court may be invoked, jurisdiction for the purpose having been conferred upon it. It may grant injunctions against inclosures, encroachments or nuisances, or may make orders for the removal, or abatement of such inclosures, encroachments or nuisances. An appeal lies to the High Court of Justice against the decision of a County Court. Nothing in the "Commons Act, 1876," is to abridge or interfere with any existing right of abating or other-

(a) In the case of a Common whereof part has been already enclosed or otherwise treated under the "Inclosure Acts," if a subsequent application be made with reference to the part

remaining unenclosed, it is submitted that this fraction would be calculated only on the unenclosed part, and not on the whole original area of the Common.

wise preventing any illegal inclosure or encroachment, or any nuisance interfering with any right of Common.

(17.) Any person intending to inclose or approve a Common otherwise than under the "Commons Act, 1876," must give various newspaper notices of his intentions, but the provisions of the section dealing with this matter do not apply to Commons or waste lands the rights of Common on which are vested solely in the Lord of the Manor.

(18.) A Common regulated in pursuance of a Provisional Order under the Act is not to be subsequently enclosed without the sanction of Parliament.

(19.) The "Commons Act, 1876," except so far as is expressly provided<sup>(a)</sup> does not apply to any Common within the meaning of the "Metropolitan Commons Acts, 1866 and 1869."

(20.) There are other provisions in the "Commons Act, 1876," some of which are in a measure foreign to the main scope of the Act itself, and therefore to the scope of this work. For instance, owners of skirts or rights of pasture in any regulated pasture created under the provisions of the "General Inclosure Act, 1845," are empowered to make By-Laws for the management of such pasture ; the Charity Commissioners are empowered to deal with and to authorise exchanges of fuel allotments : and several sections are devoted to amendments of the provisions of the "Inclosure Acts," which relate to field gardens and allotments established in connection with Inclosures.

(21.) The only one of these supplementary enactments, which it appears requisite to notice in the present place, is that which is contained in § 29. In the "Inclosure Act, 1857," provision is made for the Protection of Town and Village Greens and Recreation Grounds, and the "Commons Act, 1876," declares that it is expedient to amend such provision. This is done by that most inconvenient legislative device—a rider. The Act of 1857 recites various offences in the nature of nuisances on Town and Village Greens, and provides for the punishment of Offenders by summary process at the instance of any Churchwarden or Overseer. The section itself having been found defective, especially the limitation as to the Parties who may prosecute, it is now provided that an encroachment on, or inclosure of, a Town or Village Green, also any erection thereon, or disturbance, or interference with, or an occupation of the soil thereof, which is made otherwise than with a view to the better enjoyment of such Green or Ground, are to be deemed public nuisances ; and if any Person does any act punishable under the "Inclosure Act, 1857," he may be summarily convicted on the information of any inhabitant of the Parish—even if not a Churchwarden or an Overseer. This section is to apply only in cases where a Town or Village Green, or Recreation Ground, has a known and defined boundary.

(a) See § 20.

## CHAPTER II.

### VARIOUS ACTS RELATING TO RECREATION GROUNDS.

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**T**H E "Inclosure Acts" deal only with the provision of Recreation Grounds (using the term in a comprehensive sense) provided in connection with Inclosures ; but various subsidiary means have been sanctioned by the Legislature for facilitating the establishment of Recreation Grounds generally, though it is much to be regretted that these facilities have been so little turned to account.

**(23.)** Taking these minor Statutes in the order of date, the first which may be mentioned is the "Recreation Grounds Act, 1859," the full title of which is "An Act to facilitate grants of land to be made near populous places for the use of regulated recreation of adults and as play-grounds for children." The preamble recites that the want of open Public Grounds for the resort and recreation of adults and for play-grounds for children and youth is much felt in the Metropolis and other populous places, and by reason of the great and continuous increase of the population such evil is seriously increasing, and it is desirable to provide a remedy for the same.

**(24.)** Any land may be conveyed to Trustees for the purposes of carrying out the objects mentioned in the preamble, and for any estate, and subject to any reservations, restrictions, and conditions which the Donor or Grantor may think fit : but this enactment will not authorise the conveyance of lands for any greater estate or interest than the Donor or Grantor would, independently of the Act, have power to dispose of.

**(25.)** A form of Conveyance is suggested in the Act. A Conveyance does not require enrolment, nor to be by indenture, and it will be valid notwithstanding the "Mortmain Act" although the Donor or Grantor may die within 12 months after making the grant.

**(26.)** Lands belonging to a Municipal Corporation may be granted by the Corporation with the consent of the Treasury. In the case of lands belonging to a Parish the grant will have to be made by the Trustees or Feoffees, if any, or, otherwise, by the Churchwardens and Overseers, in pursuance of a resolution of the Vestry, or other body having the management of the affairs of the Parish, passed at a meeting duly assembled. The approval of the Local Government Board is requisite.

(27.) Lands granted under the Act are to vest in Trustees, but the management may rest with a different body of persons if the deed of Conveyance names as Managers persons who are not Trustees. It appears to be contemplated that in all cases the Lord of the Manor, together with the Churchwardens and the Overseers, shall form the Board of Trustees. As regards Managers—if no persons are named as such in the deed of conveyance, or if they shall fail, the Charity Commissioners may settle a scheme for the appointment of Managers. 22 Vict. 27, § 5.

(28.) The Managers may make By-Laws, orders, and regulations to control the use of the Recreation Ground. These By-Laws are to be approved by the "said Commissioners;" apparently this means the Charity Commissioners, and not the Commissioners of the Treasury, though the latter are also mentioned in the Act. 22 Vict. 27, § 6.

(29.) Personal Property not exceeding £1000 in amount may be bequeathed to defray the expenses of purchasing, preparing, maintaining, preserving, or ornamenting Recreation Grounds. 22 Vict. 27, § 8.

(30.) The next Act to which attention will be directed is the "Public Improvements Act, 1860," the full title of which is "an Act to enable a majority of two-thirds of the Ratepayers of any Parish or District, duly assembled, to rate their District in aid of Public Improvements for general benefit within their District." 28 & 24 Vict. 30.

(31.) The precise objects of the Act are defined to be to enable the Ratepayers of a Parish, the population of which is not less than 500 by the last Census, to purchase or lease lands, and to accept gifts and grants of land, for the purpose of forming Public Walks, Exercise or Play Grounds, and to levy Rates for maintaining the same, and for the removal of nuisances or obstructions, and for improving any open walk or foot-path, or providing seats, or shelters from rain, and for other purposes of a similar nature. 28 & 24 Vict. 30, § 1.

(32.) The Act may be adopted for any Borough, or for any Parish having a population of not less than 500 according to the last Census. At meetings summoned to adopt the Act. Corporate Bodies may vote by some person deputed under the Corporate Seal. 28 & 24 Vict. 30, §§ 2 and 5.

(33.) For the purpose of working the Act various provisions of the "Baths and Wash-houses Act, 1846," are incorporated. These provisions are such as relate to the Authorities to execute the Act, the Expenses, the appointment of Commissioners for Parishes, and the Powers of Governing Bodies. 28 & 24 Vict. 30, §§ 2.  
9 & 10 Vict. 74.

(34.) Three very short Sections deal with financial matters. After the adoption of the Act a Meeting of Ratepayers may authorise the levy of a Parish Improvement Rate. A majority of at least two-thirds in value of the Ratepayers who attend such meeting must concur in making the Rate. Nothing is said about a Poll, but no doubt the Common Law Right to demand a Poll continues at the disposal of the minority at the meeting should there be a division. A very unusual proviso is attached to the power of making an 28 & 24 Vict. 30, §§ 4 and 6—7.

**Improvement Rate.** Previous to any such rate being imposed a sum of money amounting to at least one-half of the estimated cost of the proposed improvement must have been raised, given, or collected by private subscription or donation. No rate is to exceed 6d. in the pound.

26 Vict. 18.

(35.) The "Gardens in Towns Protection Act, 1863" was designed to make provision for the better protection and charge of enclosed garden or ornamental grounds which may have been set apart for the use of the Inhabitants of any Public Square, Crescent, Circus, Street or other Public Place surrounding or adjoining such Gardens or Grounds in any City or Borough.

26 Vict. 18, § 1.

(36.) Where in any City or Borough any enclosed Garden, or ornamental Ground, has been set apart for the use of the Inhabitants, otherwise than by the revocable permission of the owner, and where the body appointed to control the same has neglected to do so, or where due provision for the management of such garden, &c., has not been made, the Metropolitan Board of Works, the Corporation of London, or the Corporate Authority of any City or Borough, as the case may be, shall take charge of the same, putting up a notice reciting the facts. If after due inquiry the Freeholder cannot be found, or if the ground is vested in any person, subject to reservations for keeping the same as a Garden or Pleasure Ground, or to prevent it from being built upon, then, in any such case, but not otherwise, the Local Authority is to cause any building or other encroachment, which does not date back at least as far as 1843, to be removed. On the request of a majority of two-thirds of the Owners and Occupiers of Houses surrounding the ground, the Authority is to vest such ground in a Committee of such Inhabitants chosen annually. The Vestry, or Board, of any and every Parish or District, within which the ground or any part thereof is situate, is from time to time to furnish such Committee with funds raised by making an addition to the General Rate, levied on the Occupiers of such Houses. If such Owners or Occupiers do not agree to take charge of such ground, the Local Authority, be it the Metropolitan Board of Works,<sup>(a)</sup> or the Corporate Authority of a City or Borough, is to vest the ground in the Vestry or Board, which is thenceforth to take charge of and maintain the ground as an open place or Street, in such manner as may appear to be most advantageous to the Public. This is to be done subject to the approval of the Metropolitan Board of Works, or Corporate Authority, as the case may require. There is a saving for the rights of Private Parties.

26 Vict. 18, § 2.

(37.) Where a right to require that any Garden or Ornamental Ground be kept and maintained as such, or that the same shall not be built upon, belongs to any Person in right of any House or other Property, he may address a notice in writing to the Local Authority, requesting the Authority to "protect" the right. If the Local Authority thinks fit to accede to such request, then the right of such

(a) Notice here that there is no mention of the Corporation of London.

Person passes to such Authority, which thereupon becomes fully empowered to exercise in its own name all rights, powers and privileges in relation thereto, and to take such legal proceedings for asserting, defending and protecting the same as the said Person might have exercised or taken.

(38.) The expenses of carrying out the Act are to be defrayed out <sup>26 Vict. 13, §§ 3.</sup> of the funds chargeable with the ordinary expenses of the Local Authority concerned.

(39.) Any Committee of Inhabitants managing a ground may make <sup>26 Vict. 13, § 4.</sup> By-Laws for the management of the same, and the preservation of the Trees, Shrubs, Plants, Flowers, Rails, Fences, Seats, Summer-Houses, and other things therein. Breach of a By-Law may subject an offender to a penalty not exceeding £5. By-Laws are not to come into operation until they have been allowed by a Judge of the High Court of <sup>26 & 27 Vict. 66,</sup> Justice, or by the Justices at Quarter Sessions. Such Judge or Justices are bound to inquire into any By-Laws tendered to them, and to allow or disallow the same as they think fit.

(40.) A Police Constable may apprehend any Person guilty of any <sup>26 Vict. 13, § 5.</sup> of the offences specified in the Act. An offender may be fined any sum not exceeding £2, or be imprisoned for any Period not exceeding 14 days. For the purposes of the Act certain provisions of the "Metropolis Local Management Act, 1855," and Jervis's Act are <sup>18 & 19 Vict. 120:</sup> <sup>11 & 12 Vict. 43.</sup> incorporated.

(41.) It is provided that the Act shall not apply to any ground <sup>26 Vict. 13,</sup> belonging to the Crown or managed by certain Crown Commissioners, who are specified ; nor to any ground for the due care and protection of which special provision is made by any Public or Private Act of Parliament ; nor to Scotland or Ireland.

(42.) After the passing of the Act just considered, some years elapsed before Parliament made any further provision with respect to open spaces, but in 1871 was passed the "Public Parks, Schools and Museums Act," limited, as before, to England and Wales. The preamble recites simply that it is expedient to facilitate gifts of land for the purpose of forming Public Parks, Schools and Museums. "Public Park" is to include any Park, Garden or other land dedicated to the Recreation of the Public. "Public Museum" is to include any buildings for the preservation of any Collection of Paintings, or other Works of Art, or of any objects of Natural History, or of any Mechanical or Philosophical inventions, instruments, models, or designs, dedicated to the Recreation of the Public, together with all libraries, reading rooms, laboratories and other offices and premises in connection therewith. With the powers relating to Schools we are not at present concerned and therefore pass them over.

(43.) All gifts and assurances of Land of any tenure, and whether <sup>26 Vict. 13,</sup> <sup>§§ 4-5.</sup> made by Deed, Will, or Codicil for the purposes only of a Public Park or Museum, and all bequests of Personal Estate to be applied in or towards the purchase of land for these purposes, are to be valid, not-

withstanding the Act 9 Geo. II. **36**, and other Statutes of Mortmain. But there is a proviso as to time. Every Will or Codicil and every Deed made otherwise than for full and valuable consideration, must, to be valid, be made 12 months at least before the death of the Testator or Grantor, and must be enrolled at the Charity Commission within 6 Calender Months next, after the time when it comes into operation.

<sup>24 Vict. 18,</sup>  
<sup>§§ 6—7.</sup>

(44.) No gift is to be of more than 20 acres of Land for any one Public Park ; nor of more than 2 acres of Land for any one Public Museum. Nothing in the Act is to invalidate or impose any restriction or condition upon any gift or assurance which would have been valid and free from such restriction or condition if the Act had not been passed.

(45.) In order to render this chapter complete it will be requisite, at the risk of a little breach of uniformity as to dates, to make mention of two Public General Statutes which confer Powers, one of them on all, and the other on many, Urban Authorities in England to make provision for places of Public Recreation.

<sup>38 & 39 Vict. 55.</sup>  
<sup>§ 164.</sup>

(46.) The "Public Health Act, 1875," empowers any Urban Authority to purchase or take on lease, lay out, plant, improve, and maintain lands as Public Walks or Pleasure Grounds. When such places are provided by any Person whomsoever the Authority may contribute to the expenses of maintenance. Any Urban Authority may make By-Laws for the regulation of any such Public Walk or Pleasure Ground.

<sup>10 & 11 Vict. 34,</sup>  
<sup>§ 185.</sup>

(47.) The "Towns Improvement Clauses Act, 1847," empowers Boards of Commissioners under the Act to purchase, rent or otherwise provide (under certain defined restrictions) lands, grounds or other places within the limits of their special Act, or within 3 miles of the Market Place or Office of the Commissioners, to be used as Pleasure Grounds or places of Public Resort or Recreation. The Commissioners may level, drain, plant and otherwise lay out and improve any Grounds thus vested in them.

## CHAPTER III.

### METROPOLITAN COMMONS.

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**I**N the previous Chapters there has been submitted to the Reader an account of the legislation respecting Commons and Recreation Grounds which is applicable to England generally. It will now be requisite to present an abstract of certain Acts which apply only to London and the immediate neighbourhood.

(49.) The "Metropolitan Commons Act, 1866," slightly extended by the "Metropolitan Commons Amendment Act, 1869," makes provision for dealing with Commons, the whole or any parts of which are situate within the Metropolitan Police District as defined at the passing of the first-mentioned Act.

(50.) In order to meet the fact that several kinds of Local Authority exercise jurisdiction within the Metropolitan Police Limits, it is enacted that the Local Authority shall be the Metropolitan Board of Works within the jurisdiction of that Board ; a Local Board where there is such a Board ; and the Parish Vestry in all other cases. Each of the two first-named Authorities defrays its expenses out of its general rate, whilst in Parishes the expenses are charged to the Poor Rate.

(51.) After these preliminary definitions the Act proceeds to prohibit any future inclosure of a Metropolitan Common ; and limits the work of the Inclosure Commissioners to the establishment of schemes of local management with a view to the expenditure of money on the drainage, levelling, and improvement of a Common. A scheme may also include By-Laws and Regulations for the prevention of nuisances and the preservation of order on the Common.

(52.) Proceedings under the Act are initiated by a Memorial to the Commissioners which may emanate from (1) a Lord of the Manor ; (2) any Commoners ; (3) the Local Authority ; or (4) any twelve or more Ratepayers, inhabitants of the Parish or Parishes in which the Common is situate. Where a Common extends into the Districts of two or more Local Authorities any one of them may act.

(53.) The proceedings of the Inclosure Commissioners after they have received a memorial are regulated by a series of sections, very similar in their details to those prescribed by the "Commons Act, 1876." It does not seem necessary to furnish here any abstract of them, as they are printed in full in Part IV. of this work.

<sup>29 & 30 Vict. 122,</sup> <sup>§ 24.</sup> (54.) The expenses incurred by the Commissioners in relation to any memorial or to any scheme consequent thereon, are to be defrayed by the Memorialists, or by any ratepayers or inhabitants of the Parish or District in or near which the Common is situate, or of the Metropolis, or by any Local Authority willing and offering to defray the same. The Commissioners may require the money to be paid in advance or satisfactory security for its payment to be given.

<sup>29 & 30 Vict. 122,</sup> <sup>§ 26.</sup> (55.) A Local Authority may, in relation to any Common for which it is the Local Authority, and the Metropolitan Board of Works in relation to any Common (although not one for which it is the Local Authority), contribute as they think fit, either in a gross sum or by annual payments or otherwise, towards the expenses of executing any scheme under the Act when confirmed by Parliament.

<sup>29 & 30 Vict. 122,</sup> <sup>§ 27.</sup> (56.) A scheme which has been duly carried out may be subsequently amended by another scheme, but the amending scheme must pass through the same formalities as the original scheme.

<sup>29 & 30 Vict. 122,</sup> <sup>§§ 28—9 and 32.</sup> (57.) Provision is made for a Lord of a Manor, a Commoner, or other Person having any estate, interest or right, in, over, or affecting a Common, being under disability. Also for the case of rights being vested in Her Majesty, or being part of the possessions of the Duchies of Lancaster or Cornwall.

<sup>29 & 30 Vict. 122,</sup> <sup>§ 30.</sup> (58.) A Lord of a Manor, &c., is empowered to appoint an agent to act for him for the purposes of any memorial or scheme under the Act. Such an agent is to be appointed by a Power of Attorney (which is exempted from Stamp Duty) and may be invested with the fullest Powers to act as if he were a Principal.

<sup>29 & 30 Vict. 122,</sup> <sup>§ 31.</sup> <sup>9 Geo. II. 36.</sup> (59.) Where any estate, interest, or right connected with a Common is conveyed by Deed for the purposes of a scheme under the Act, with the approval of the Commissioners, the "Mortmain Act" is not to apply to the conveyance.

(60.) The session of 1877 saw the introduction into Parliament of another measure relating to open spaces in the Metropolis, and intended to bestow additional powers on the Metropolitan Board of Works.

## PART II.

### Official Documents.

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THE Inclosure Commissioners, as the Department of State charged to see to the carrying out of the "Commons Act, 1876," have issued various blank Forms for the guidance of persons desirous of taking advantage of the provisions of the Act. These forms are here given.

#### 1.

Information and Directions as to the mode in which Applications for the Regulation or Inclosure of Commons, under the "Inclosure Acts, 1845 to 1876," are to be made to the Inclosure Commissioners; with explanations respecting the Law relating to the Regulation and Inclosure of Commons.

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References to  
the "Commons  
Act, 1876."

1. Application may be made to the Inclosure Commissioners for England and Wales for a Provisional Order:

- (1.) For the Regulation of a Common; or
- (2.) For the Inclosure of a Common; or
- (3.) For the Regulation of a part of a Common, and the Inclosure of the remainder; but in this case the application must be dealt with as if the respective parts were separate Commons.

2. The persons making the application must represent at least one-third in value of the interests which are proposed to be affected by the Provisional Order.

If a Common is situate wholly or partly in any town, or within 6 miles of any town, the Urban Sanitary Authority may, with the consent of persons representing one-third in value of the interests proposed to be affected, make application for the regulation of such Common, with a view to the benefit of their town.

3. A Provisional Order for the Regulation of a Common may provide, generally or otherwise, for the "adjustment of rights" in respect of such Common, or for the "improvement" of such Common, or for either of such purposes.

The **adjustment of rights** in respect of a Common comprises all or any of the following things:

- (1.) As respects rights of common of pasture in a Common, being waste land of a manor,—the determination of the persons by whom, the stock by which, and the times at which such common of pasture is to be exercised;

- (2.) As respects rights of common of turbary, or taking of estovers, or taking of gravel, stone, or otherwise interfering with the soil of the Common, being waste land of a manor,—the determination of the persons by whom, and the mode and place or places in which, and the times at which such rights are to be exercised; also, on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction, modification, or abolition of all or any of such rights which may permanently injure the Common;
- (3.) As respects rights of common in land which is not waste land of a manor,—the stinting or other determination of such rights, and the persons by whom, and the mode in which, and the times at which such rights are to be exercised; as also, on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction, modification, or abolition of all or any of such rights which may be injurious to the general body of the commoners or to the proper cultivation of the land;
- (4.) As respects any Common, whether it is or is not waste land of a manor,—the determination of the rights and obligations of the lord of the manor, severalty owners, or other person or persons entitled to the soil of such Common; as also, on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction, modification, or abolition of all or any of such rights; and in particular, in the case of severalty owners, of all or any of such rights which may be injurious to the general body of the severalty owners or to the proper cultivation of the land;
- (5.) Generally as respects any Common, whether it is or is not waste land of a manor,—the determination of any rights and settlement of any disputes relating to boundaries, rights in the soil or in the produce of the soil, or otherwise, whether arising between the commoners themselves, or between the commoners in relation to the lords of the manors, severalty owners, or other person or persons entitled to the soil of the Common, which settlement may be conducive to the interests of all or any class of persons interested in the Common.

§ 5.

The improvement of a Common comprises all or any of the following things; that is to say,

- (1.) The draining, manuring, or levelling the Common;
- (2.) The planting trees on parts of such Common, or in any other way improving or adding to the beauty of the Common;
- (3.) The making or causing to be made by-laws and regulations for the prevention of, or protection from nuisances, or for keeping order on the Common;
- (4.) The general management of such Common;
- (5.) The appointment from time to time of conservators of the Common for the purposes aforesaid.

§ 6.

4. A provisional order may be issued for the inclosure of a Common in accordance with the provisions of the Inclosure Acts 1845 to 1876; but the Commons Act, 1876, requires that special information shall be furnished to the Inclosure Commissioners as to the advantages the applicants anticipate from the inclosure of the Common as compared with its regulation, and also as to the reasons why an inclosure is expedient, when viewed in relation to the benefit of the neighbourhood.

§ 10 (4).

5. In any provisional order, such of the following terms and conditions for the benefit of the neighbourhood, as are applicable to each case, are required by the Commons Act, 1876, to be inserted.

- (1.) That free access is to be secured to any particular points of view;
- (2.) That particular trees or objects of historical interest are to be preserved;
- (3.) That there is to be reserved, where a recreation ground is not set out, a privilege of playing games or of enjoying other species of recreation at such times and in such manner and on such parts of the Common as may be thought suitable, care being taken to cause the least possible injury to the persons interested in the Common;

§ 7.

- (4.) That carriage roads, bridle paths, and foot paths over such Common are to be set out in such directions as may appear most commodious ;
- (5.) That any other specified thing is to be done which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood.
6. Before an application is made to the Inclosure Commissioners, the Applicants § 10 (1). must, in every case, publish, in the form approved by the Commissioners, an Advertisement in the Newspaper or Newspapers having the largest circulation in the neighbourhood of the Common, giving notice of their intention to apply to the Commissioners for a Provisional Order. In ordinary cases two insertions will be sufficient, with an interval of a week between each.
7. In the case of a Suburban Common, that is to say, any Common which is situate § 8. either wholly or partly in any Town or Towns, or within 6 miles of any Town or Towns, notice of the intended Application must be served on the Urban Sanitary Authority or Authorities. A "Town" means any Municipal Borough, or Improvement Act District, or Local Government District, having a population of not less than 5000 inhabitants. The population is to be reckoned according to the last published Census, and the distance is to be measured in a direct line from the Town Hall, or if there shall be no Town Hall, then from the Cathedral or Church, if there be only one Church, or, if there be more Churches than one, then from the principle Market Place of such Town to the nearest point of the Suburban Common.
8. The Application must be on a form supplied by the Commissioners, and be § 10. accompanied by a map on tracing cloth, clearly defining the lands proposed to be dealt with ; also by copies of the newspapers containing the advertisement of the intended Application, and, in the case of a Suburban Common, proof of service of notice on the Sanitary Authority or Authorities.
9. When forms of Application are applied for, it should be stated whether they are required for "Regulation" or for "Inclosure," or partly for one and partly for the other.
10. In case of an Application partly for Regulation and partly for Inclosure, both § 2. forms must be filled up and signed, and the boundaries between the respective parts must be set out on the Map.
11. The Application must be signed by persons representing at least one-third in § 2. value of such interests in the Common as are proposed to be affected by the Provisional Order.
12. On receipt of an Application, accompanied by the before-mentioned documents, § 10 (6). together with a deposit, on account of the expenses which may be incurred, of such sum as the Commissioners in each case may require, the Commissioners will take the matter into consideration, and if satisfied that a *prima facie* case has been made out, and that, regard being had to the benefit of the neighbourhood as well as to private interests, it is expedient to proceed further, they will order a local inquiry to be held by an Assistant Commissioner.
13. The Assistant Commissioner will inspect the Common, and, after not less than § 11. 21 days' notice, published as directed by the Commons Act, 1876, will convene one or more Public Meetings in the locality, one at least of which will be held in the evening, between the hours of 7 and 10 o'clock, for the purpose of hearing all persons desirous of being heard in relation to the subject matter of the inquiry, and of making such other inquiries and gaining such information as may enable him to report fully to the Commissioners thereon.
14. After considering the Assistant Commissioner's report, the Commissioners, if § 12. satisfied that the Regulation or Inclosure is expedient, will frame a draft Provisional Order, setting forth the provisions to be made for the benefit of the neighbourhood and for the protection of private interests, and will deposit a Copy of the same in the Parish for the consideration of the parties interested, and will give public notice of such deposit.
15. If the consents required by the Act, that is to say, of persons representing at § 12 (5). least two-thirds in value of such interests in the Common as will be affected by the Provisional Order, and of the Lord of the Manor in case of land waste of any Manor or to the soil of which the Lord is entitled, are given to the draft Provisional Order as originally deposited, and to any modifications thereof, the Provisional Order will be deemed to be final, and the Commissioners will certify that it is expedient that such Order should be confirmed by Parliament.

§ 12 (6).

16. When the freemen, burgesses, or inhabitant householders of any city, borough or town are entitled to rights of common or other interest in the Common, the consent of two-thirds in number of such freemen and burgesses, so entitled, as may be resident in such city, borough, or town, or within 7 miles thereof, or of such inhabitant householders, must be given to the Provisional Order.

§ 12 (11).

17. If the report of the Inclosure Commissioners is referred to a Committee of either House of Parliament for consideration, and any modifications are recommended, the Inclosure Commissioners may modify the Provisional Order accordingly, and if such modifications are consented to in the same manner as the Provisional Order originally deposited, the Commissioners will make a special report to that effect.

§ 22.

18. After the Bill confirming the Provisional Order has received the Royal Assent, the Commissioners will convene a meeting of the parties interested for the purpose of appointing a Valuer to proceed with and carry out the Regulation or Inclosure of the Common, and of resolving upon instructions to the Valuer not inconsistent with the terms of the Provisional Order. But no appointment of a Valuer will be valid until it has been confirmed by the Commissioners.

19. The Regulation or Inclosure will then proceed as directed by the Inclosure Acts, 1845 to 1876.<sup>(a)</sup>

[20. Contains an enumeration of the "Inclosure Acts 1845 to 1876," copied from the Schedule to the "Commons Act, 1876," which see.]

## 2.

**Application to the Inclosure Commissioners for England and  
Wales for a Probisional Order for the Regulation of a  
Common under the Provisions of the "Inclosure Acts,  
1845 to 1876."**

Parish or Town-  
ship, or several  
Parishes or  
Townships, or  
extra Parochial  
Place or Places,  
as the case may  
be.  
If the Land is in  
any District not  
here properly  
named, insert  
the proper des-  
cription.  
<sup>\*</sup> Or Counties.

The Land to which this application relates is situated in the

of

in the County\* of

and is commonly known as

N.B.—All Signa-  
tures under a  
Power of Attor-  
ney to any docu-  
ment, must be in  
the name of the  
principal, and  
the Power of  
Attorney  
appended  
thereto.

WE, the undersigned, being persons representing at least one-third in value of such interests in the Land above-mentioned as are to be affected, propose the Regulation of such Land, under "The Inclosure Acts, 1845 to 1876," and submit to the Inclosure Commissioners for England and Wales the information in respect to such Land, and to the proposed Regulation, required by the Questions hereunto annexed, believing such information to be correct: And we hereby apply to the Commissioners, if satisfied that it is desirable, to issue a Provisional Order, and to certify that it is expedient that such Provisional Order should be confirmed by Parliament.

(Signed)

(a) See the Schedule to the Act, 39 & 40 Vict. 56.

INFORMATION TO BE FURNISHED TO THE INCLOSURE COMMISSIONERS  
RESPECTING THE COMMON TO WHICH THE FOREGOING APPLICATION  
RELATES.

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1. What is the extent in Statute Acres of the Land proposed to be dealt with and from what source was the area obtained?
2. Does the Land lie together? If in separate tracts, what is the acreable extent of each?
3. Is the Land proposed to be dealt with waste and uncultivated Land, Arable, Meadow, Pasture, or Woodland? If of different kinds, what is the acreable extent of each?
4. What is the nature of the soil?
5. Does any part of the Land abut upon the shore of the sea, or of a tidal navigable river?
6. Are there any open Mines, or any minerals, or valuable strata, now in course of being worked, or known to have been formerly worked, or known or supposed to exist in or under the Land? If so, what is the nature of these Mines, minerals, or valuable strata, and the extent of the workings, if any; and is the property of these Mines, minerals, and valuable strata, separate from the Ownership of the soil or otherwise, and are they worked by the Owners or by Lessees?
7. Is the Crown interested in any part of the Land?
8. Is all, or any, and if any, what part of the Land proposed to be dealt with, waste Land of a Manor, on which the tenants of such Manor have rights of common? If so, give the name of the Manor and of the Lord.
9. Is all, or any, and if any, what part of the Land proposed to be dealt with subject to rights of common which may be exercised at all times of the year for Cattle levant and couchant upon other Land, or to any rights of common which may be exercised at all times of every year, and which are not limited by numbers or stints?
10. Is the Land proposed to be dealt with, or any, and what part of it, subject to any, and what, rights of common not mentioned in questions 8 and 9, or is all, or any, and what part of it, gated or stinted pasture, or what are the rights affecting such Land, or the several tracts, if more than one, which are supposed to make it subject to be dealt with under the Inclosure Acts, 1845 to 1876?
11. Is the Common or any part thereof situate within the Metropolitan Police District?
12. Is the Common a Suburban Common, that is to say, is it situate either wholly or partly, in any town or towns, or within 6 miles of any town or towns? <sup>(a)</sup>

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(a) See as to the meaning of the word "town" and as to the measurement of distances, 39 & 40 Vict. 56, § 8.

13. State the distance of the Common from any neighbouring towns or villages, and the populations of such towns or villages.

14. What is the number of the inhabitants of the *Parish, Township, or Place, or several Parishes, Townships, or Places*, in which the Land proposed to be dealt with is situated, according to the last Parliamentary Census?

15. What are the chief occupations of the inhabitants; agricultural, manufacturing, or otherwise; and what kinds of manufactures, if any, are chiefly carried on?

16. Do the Applicants desire the Adjustment of Rights? or the Improvement of the Common? or both?

17. If the Adjustment of Rights is desired, specify for which of the following things it is intended to provide:

- (1.) As respects rights of common of pasture in a Common, being waste of a Manor,—the determination of the persons by whom, the stock by which, and the times at which, such common of pasture is to be exercised;
- (2.) As respects rights of common of turbary, or taking of estovers, or taking gravel, stone, or otherwise interfering with the soil of the Common, being waste Land of a Manor,—the determination of the persons by whom, and the mode and place or places in which, and the times at which such rights are to be exercised; also, on compensation made to any person aggrieved, either by grant of a right of equal value, or, with his consent in writing, in money,—the restriction, modification, or abolition of all or any of such rights which may permanently injure the Common;
- (3.) As respects rights of common in Land which is not waste Land of a Manor,—the stinting or other determination of such rights, and the persons by whom, and the mode in which, and the times at which such rights are to be exercised; as also, on compensation made to any person aggrieved, either by grant of a right of equal value, or, with his consent in writing, in money,—the restriction, modification, or abolition of all or any of such rights which may be injurious to the general body of the Commoners or to the proper Cultivation of the Land;
- (4.) As respects any Common, whether it is or is not waste Land of a Manor,—the determination of the rights and obligations of the Lord of the Manor, severally Owners; or other person or persons entitled to the soil of such Common, and also, on compensation

made to any person aggrieved, either by grant of a right of equal value, or, with his consent in writing, in money, — the restriction, modification, or abolition of all or any of such rights, and in particular, in the case of severalty owners, of all or any of such rights which may be injurious to the general body of the severalty owners, or to the proper cultivation of the Land;

- (5.) Generally, as respects any Common, whether it is or is not waste land of a Manor,—the determination of any rights and settlement of any disputes relating to the boundaries, rights in the soil, or in the produce of the soil, or otherwise, whether arising between the Commoners themselves, or between the Commoners in relation to the Lords of the Manors, severalty owners, or other person or persons entitled to the soil of the Common, which settlement may be conducive to the interests of all or any class of persons interested in the Common.

18. If the Improvement of the Common is desired, specify for which of the following things it is intended to provide :—

- (1.) The draining, manuring, or levelling the Common ;
- (2.) The planting trees on parts of the Common, or in any other way improving or adding to the beauty of the Common ;
- (3.) The making or causing to be made by-laws and regulations for the prevention of or protection from nuisances, or for keeping order on the Common ;
- (4.) The general management of the Common ;
- (5.) The appointment from time to time of Conservators of the Common for the purposes aforesaid.

19. Is it proposed that all of the specified provisions for Adjustment of Rights or Improvement of the Common shall apply to the whole or part of the Common ? Explain which provisions are intended to apply to particular parts.

20. Is there any Town Green or Village Green in the Parish or Place within which the Land proposed to be dealt with is situated, or any ground other than the Common available for the recreation of the neighbourhood ? If so, give particulars as to area, situation, and character, and to what extent it is used by the public for recreation.

21. Do the inhabitants of the neighbourhood resort to the Common for purposes of recreation ? And is any particular part used for playing games ?

22. Is it proposed that any, and if any, what allotment should be made for recreation ground ? Is the land proposed to be so allotted conveniently situated, and otherwise suitable for the purpose ?

23. State the number of cottages in the neighbourhood, and whether or not they have gardens attached. Give information as to the average size of such gardens, and as to any other land now available for gardens for the poor inhabitants.

24. Is it proposed that any, and if any, what allotment should be made for field gardens? Is the Land proposed to be so allotted conveniently situated, and suitable for the purposes of cultivation as gardens?

25. Do the applicants suggest that, for the benefit of the neighbourhood, any of the following terms and conditions which may be applicable, should be inserted in the Provisional Order?

- (1.) That free access be secured to any particular points of view;
- (2.) That particular trees or objects of historical interest be preserved;
- (3.) That there be reserved, where a recreation ground is not set out, a privilege of playing games or of enjoying other species of recreation at such times, and in such manner, and on such parts of the Common, as may be thought suitable;
- (4.) That carriage roads, bridle paths, and foot-paths over the Common be set out in such directions as may appear most commodious;
- (5.) That any other specified thing be done which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood.

26. If the Lord of the Manor is entitled to the soil, or to mineral or other rights, and any of such rights would be affected by the Provisional Order, what allotment or compensation has been agreed on, or is proposed to be made to such Lord in respect of his interest so affected?

27. What is the number, so far as can be ascertained, of the parties interested as owners of the soil, common rights, or otherwise, in the Land proposed to be dealt with? How many of the persons so interested have assented to this application? <sup>(a)</sup>

28. What proportion does the value of the interest of the assenting parties bear to the whole value of the interests in the Land proposed to be dealt with? <sup>(a)</sup>

29. How many of the parties interested have dissented from the application, and what is the proportion of their interests to the whole value of the interests in the Land? <sup>(a)</sup>

30. How have the values of interests been ascertained; by the assessment to the Poor Rate, by number of stints, or how otherwise? <sup>(a)</sup>

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(a) OFFICIAL NOTE.—“If the land is in separate tracts, subject to separate and distinct rights, the parties interested in each tract, and the number and proportion in value of the assents and dissents of the parties interested in each tract, should be stated.”

31. Is there any litigation, dispute, or question, as to the boundaries of the Land proposed to be dealt with, or the mines, minerals, or strata in or under it? If so, between whom has it arisen?

32. Would any exchanges with owners of land, not part of the Common, be desirable?

33. In what respects is the Regulation of the Common expedient, considered in relation to the benefit of the neighbourhood?

34. What advantages do the applicants anticipate from the Regulation of the Common in relation to private interests?

35. Is it proposed to provide by the Provisional Order for raising money towards the improvement or protection of the Common, either by rate, or by the sale of outlying or other small portion not exceeding one-fortieth part of the total area of the Common?

36. Has any previous Application for the Inclosure or Regulation of the Lands referred to in this Application been made? If so, give the date of such Application.

37. Name an Inn <sup>(a)</sup> or other convenient place in the Parish for holding meetings.

38. What is the Railway Station nearest to the Common and to the proposed place for holding meetings, and what is the distance of such Railway Station?

39. Name the places on which it will be necessary to affix notices of public meetings to be held by the Assistant Commissioner, in order to comply with the direction in the 11th sec. of The Commons Act, 1876, that copies shall be posted on the Church door,—on or near the Common,—at the Post Office or Post Offices,—at any Town Hall or Vestry Hall or other building or room, the expense of maintaining which is payable out of any local rate,—and at all places in the parish or district where notices are usually posted.

40. The Application must be accompanied by a Map on tracing cloth, clearly defining the Lands proposed to be dealt with; and by copies of the Newspapers containing the advertisement of the intended application; and also, in the case of a Suburban Common, by proof of service of notice on the Urban Sanitary Authority or Authorities.

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(a) Public Houses should be avoided as much as possible for all such purposes as this. Some public building, such as a School Room or Vestry Hall, should be chosen where such is to be had.  
—G. F. C.

## 3.

**Application to the Inclosure Commissioners for England and Wales for a Provisional Order for the Inclosure of a Common under the provisions of the "Inclosure Acts, 1845 to 1876."**

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Parish or Township, or several Parishes or Townships, or extra Parochial Place or Places, as the case may be.  
If the Land is in any District not here properly named, insert the proper description.  
\* Or Counties.

The Land to which this application relates is situated in the  
of  
in the County\* of  
and is commonly known as

---

N.B.—All Signatures under a Power of Attorney to any document, must be in the name of the principal, and the Power of Attorney appended thereto.

WE, the undersigned, being persons representing at least one-third the value of such interests in the Land above-mentioned as are to be affected, propose the Inclosure of such Land, under "The Inclosure Acts, 1845 to 1876," and submit to the Inclosure Commissioners for England and Wales the information in respect to such Land, and to the proposed Inclosure, required by the Questions hereunto annexed, believing such information to be correct : And we hereby apply to the Commissioners, if satisfied that it is desirable, to issue a Provisional Order, and to certify that it is expedient, that such Provisional Order should be confirmed by Parliament.

(Signed)

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**INFORMATION TO BE FURNISHED TO THE INCLOSURE COMMISSIONERS RESPECTING THE COMMON TO WHICH THE FOREGOING APPLICATION RELATES.**

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[Paragraphs 1—15 are almost word for word identical with paragraphs 1—15 of the preceding Document.]

[Paragraphs 16—28 are almost word for word identical with paragraphs 20—32 of the preceding Document.]

29. State particularly the advantages anticipated from the Inclosure of the Common as opposed to its Regulation ; and also the reasons why an Inclosure is expedient when viewed in relation to the benefit of the neighbourhood.

30. What advantages do the Applicants anticipate from the Inclosure in relation to private interests ?

[Paragraphs 31—5 are almost word for word identical with Paragraphs 36—40 of the preceding Document.]

## 4.

## Form of Advertisement prescribed by the Inclosure Commissioners.

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COMMON.

Notice is hereby given that application is about to be made to the Inclosure Commissioners for England and Wales, under the provisions of the Inclosure Acts 1845 to 1876, for a Provisional Order for the\*  
of  
Common, situate in the Parish of  
in the County of

\*Here state whether the Application is for the "regulation" or for the "inclosure" of the Common, or for the regulation of part and the inclosure of the remainder.

Dated this                    day                    18  
(Signature of Agent.)

## PART III.

### Precedents of By-Laws and Regulations.<sup>(a)</sup>

#### 1.

#### By-Laws to regulate a Common.

##### COMMON.

Enumeration of  
Offences.

THE —— hereby give notice that they have prepared BY-LAWS with respect to —— Common, pursuant to the —— Act, and that such By-Laws are as follows, that is to say :—

1. The matters in the following 19 rules are hereby prohibited, and are, pursuant to the Statute above-mentioned, declared to be offences, and throughout these By-Laws, the word "Board" shall mean the —— Board; and the word "Common" shall mean —— Common, as the same is delineated on a plan deposited with the Clerk of the Peace for the County of ——

1. Removing or wilfully injuring any of the fences, seats, barriers, gates or notice boards, or other matters or things on the common, or defacing or disfiguring the same by the posting of bills, placards, or notices.
2. Cutting, felling, burning, breaking, or otherwise doing wilful damage or injury to the timber or other trees, shrubs, brushwood, flowers, gorse, furze, fern, or turf on the common.
3. Committing any trespass or encroachment on, or making an enclosure of, any part of the common.
4. Erecting on the common, unless with the consent of the Board in writing, any posts, rails, fences, poles, tents, booths, stands, or any buildings or erections of any kind whatsoever.
5. Using as a drying or bleaching ground, or for shaking or beating carpets, any part of the common, except with the consent of the Board in writing.
6. Wilfully committing any nuisance on the common.
7. Depositing or leaving on the common, or in the ponds, any road-sand, refuse, rubbish, manure, dead animals, or other matters or things without the previous consent of the Board in writing.
8. Taking, digging, cutting, damaging, or removing gravel, sand, sods, bog-earth, clay, turf, or other substances, off or from the common.
9. Burning, or causing to be burned, on the common, any timber, wood, brushwood, gorse, furze, fern, earth, or other substances.
10. Letting on hire on the common, horses, ponies, mules, asses, or goats, without a license from the Board, or their officer appointed for the purpose.
11. Drawing, driving, standing, or placing any gun or gun-carriage, limber or waggon, cart, carriage, van, or truck, on or across the turf of the common or the footpaths.
12. Turning out on the common to graze or feed, or allowing or suffering to remain thereon, without right or due authority, any cattle, sheep, swine, horse, ass, mule, turkeys, geese, ducks, fowls, or other animals.
13. Unlawfully constructing or laying any sewer, drain, pipe, or waterway, or other matter of like nature, on, into, or under any part or parts of the common.
14. Making or forming any new roads over or across the common without the consent of the Board in writing.
15. Gambling, betting or playing with cards, or dice on the common.

(a) The following Statutes authorise the establishment of By-Laws:—22 Vict. 27, § 6; 23 & 24 Vict. 30, § 3; 26 Vict. 13, § 4; 29 & 30 Vict. 122, § 6; and 38 & 39 Vict. 55, § 164.

16. Bird-catching, bird-trapping, or laying nets for the taking of birds, or shooting or chasing birds, or taking birds' eggs or nests, or chasing or pursuing game or animals on the common.

17. Throwing stones, or sticks, or other missiles, or doing anything which may endanger the public, or be deemed a nuisance or an obstruction or annoyance to the public on the common.

18. Brawling, fighting, quarrelling, cursing, swearing, or using indecent or improper language, or being otherwise disorderly on the common, or wilfully or designedly doing any act which outrages public decency.

19. Wilfully interfering with, obstructing, or annoying any persons who are playing, or who have made preparations for playing, at cricket or other lawful games, on the portions of the common sanctioned by the Board.

2. Any person committing any of the offences in the above nineteen Rules, shall be subject to a penalty not exceeding Forty Shillings, and for every continuing offence, a penalty not exceeding Twenty Shillings, for each day on which such offence shall continue, after written notice to the person committing such offence shall have been given.

3. If any person assaults or resists, or aids or incites any person to assault or resist, any constable, or any officer of the Board, or other person, in the execution of his duty, or the lawful exercise of any authority under the Act, or any By-Law thereunder, he shall, for every such offence, be liable, on summary conviction, to a penalty not exceeding £5.

4. All persons found disturbing the public peace, and also all persons committing any offence against the Act of Parliament passed in the Session of Parliament held in the 2nd and 3rd years of the reign of Her present Majesty, Chapter 47, intituled "An Act for further Improving the Police in and near the Metropolis," are liable to immediate apprehension without warrant, so that they may be dealt with according to law.

5. Nothing in these By-Laws shall interfere with the powers of the —— police, or any authority legally existing for preventing or punishing offences.

6. Nothing in these By-Laws shall be construed as prohibiting on the common:—

(a) Infantry military drill.

(b) An encampment of troops for a single night for a halt on a march to or from ——

(c) A review (with the previous assent of the Board) of Her Majesty's troops and auxiliary forces, such assent to be subject to the following conditions:—

When an adequate area for such drill, encampments, and reviews, respectively, has been fixed by the Board, that area only shall be used for such purposes.

All damage done by Her Majesty's troops and auxiliary forces to the surface of the common, which shall be capable of immediate reparation, shall be made good by the troops and forces encamped before they leave the common; and any damage to the common which can be compensated only by pecuniary payment, shall be so compensated by the Secretary of State for War.

Any difference which may arise between the Secretary of State for War and the Board concerning the adequacy of the area fixed by the Board for the respective purposes aforesaid, or concerning compensation for damage done to the common, shall be determined by the First Commissioner of Works.

Penalties.

Penalty for  
obstructing  
execution of  
Act.

Apprehensions.



*Approved, &c., &c.*

*Allowed, &c., &c.*

## 2.

### **By-Laws to regulate a Public Walk or Pleasure Ground.**

—o—

(1.) The matters in the 18 paragraphs next following are hereby prohibited, and are declared to be offences pursuant to the statute. The word "pleasure ground" hereinafter used shall mean the following public walks, pleasure grounds and plantations of trees. [Here set out the respective places by name and description.]

Enumeration of  
Offences.

(1.) Removing or wilfully injuring any of the fences, seats, barriers, gates, or notice boards, or other matters or things in any pleasure ground, or defacing or disfiguring the same by the posting of bills, placards, or notices.

(2.) Cutting, felling, burning, breaking, or otherwise doing wilful damage or injury to the timber, or other trees, shrubs, brushwood, flowers, gorse, furze, fern, turf, or cultivated growing plant in any pleasure ground.

- (3.) Committing any trespass or encroachment on any part of any pleasure ground.
- (4.) Erecting in any pleasure ground, unless with the consent of the Board in writing, any posts, rails, fences, poles, tents, booths, stands, or any buildings or erections of any kind whatsoever.
- (5.) Using as a drying or bleaching ground, or for shaking or beating carpets, any part of any pleasure ground, except with the consent of the Board in writing.
- (6.) Wilfully committing any nuisance in any pleasure ground.
- (7.) Depositing or leaving in any pleasure ground, or in any pond therein, any road-sand, refuse, rubbish, manure, dead animals, or other matters or things, without the previous consent of the Board, in writing.
- (8.) Taking, digging, cutting, damaging, or removing gravel, sand, sods, bog-earth, clay, turf, or other substances, of or from any pleasure ground.
- (9.) Burning, or causing to be burnt, in any pleasure ground, any wood, gorse, furze, fern, or other substances.
- (10.) Drawing, driving, standing, or placing any waggon, cart, carriage, van, or truck, on or across the turf of any pleasure ground, or in any footpath therein.
- (11.) Breaking in, or exercising, any horse, ass, or mule, on, over, or across any part of any pleasure ground.
- (12.) Turning out in any pleasure ground to graze, or feed, or remain thereon, without right or due authority, any cattle, sheep, swine, horse, ass, mule, turkeys, geese, ducks, fowls, or other animals.
- (13.) Making or forming any new roads or paths over or across any part of any pleasure ground without the consent of the Board in writing.
- (14.) Gambling, betting, or playing with cards or dice in any pleasure ground.
- (15.) Bird catching, bird trapping, taking birds' eggs or nests, shooting or chasing birds, game, or animals in any pleasure ground.
- (16.) Throwing stones, or sticks or other missiles, or doing anything which may endanger the public or be deemed a nuisance or an obstruction or annoyance to the public in any pleasure ground.
- (17.) Brawling, fighting, quarrelling, cursing, swearing, or using indecent or improper language, or being otherwise disorderly in any pleasure ground, or wilfully or designedly doing any act which outrages public decency.
- (18.) Wilfully interfering with, obstructing, or annoying any persons who are playing, or have made preparations for playing, at Cricket or other lawful games, on the portions of any pleasure ground authorised by the Board to be so used.

## Penalties.

(2.) Any person committing any one or more of the offences prohibited as above, shall be subject to a penalty not exceeding 40s., and for every continuing offence, a penalty not exceeding 20s. for each day on which such offence shall continue, after written notice shall have been given to the person committing such offence. Any person who assaults or resists, or aids or incites any person to assault or resist, any constable, or officer of the Board, or other person in the execution of his duty, or in the lawful exercise of any authority under these By-Laws shall for every such offence be liable, on summary conviction, to a penalty not exceeding £5. Provided, nevertheless, that the Justices or Court before whom any complaint shall be made for a breach of these By-Laws, may if they see fit, reduce these or any penalties herein prescribed.

## Disturbing the Peace.

(3.) All persons found disturbing the public peace are liable to removal and apprehension without warrant, so that they may be dealt with according to law.



*Approved, &c., &c.*

*Allowed, &c., &c.*

## PART IV.

### Statutes relating to Commons and Open Spaces.

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THE Statutes here printed are given in their chronological order without any attempt at classification.

It is believed that for purposes of reference the inconvenience of having to examine several sets of Statutes to find any required one, is greater, on the whole, than the inconvenience of having kindred Statutes separated from one another by others because those others happen to be of intermediate date.

The Marginal Notes have been in most cases simplified and shortened so as to make them more convenient.

The Foot-notes are designed to be just numerous and ample enough to prevent a person who consults only the Statutes being seriously misled for want of sufficient cross references to earlier and later Statutes. Explanatory comments have been very sparingly supplied, for such belong rather to Part I. of this Work.



## 10 &amp; 11 VICT., c. 34.

A.D. 1847.

*An Act for Consolidating in One Act certain Provisions usually contained in Acts for paving, draining, cleansing, lighting, and improving Towns.<sup>(a)</sup> (21st June, 1847).*

The Commissioners may purchase places for Public Recreation.

**135.** The Commissioners may by a Special Order as herein defined, but not otherwise, purchase, rent, or otherwise provide Lands, Grounds, or other Places, either within the limits of the Special Act, or at a reasonable distance therefrom, not exceeding 3 miles from the centre of the principal Market Place, if any, or from the principal Office of the Commissioners, and in a situation to be approved of by the Inspector, to be used as a Pleasure Ground or Place of Public Resort or Recreation;

And the Commissioners may from time to time level, drain, plant, and otherwise lay out and improve any such Public Lands or Grounds for the more convenient use and enjoyment thereof.



## 20 &amp; 21 VICT., c. 31.

A.D. 1857.

*An Act to amend and explain the Inclosure Acts. (10th August, 1857).*

Nuisances on Village Greens, and allotments for exercise and recreation.

**12.** And whereas it is expedient to provide summary means of preventing Nuisances in Town Greens and Village Greens, and on land allotted and awarded upon any Inclosure under the said Acts as a place for exercise and recreation: If any person wilfully cause any injury or damage to any Fence of any such Town or Village Green or Land, or wilfully and without lawful Authority lead or drive any Cattle or Animal thereon, or wilfully lay any Manure, Soil, Ashes, or Rubbish, or other Matter or Thing thereon, or do any other Act whatsoever to the injury of such Town or Village Green or Land, or to the interruption of the use or enjoyment thereof as a Place for Exercise and Recreation, such person shall for every such Offence, upon a summary conviction thereof before two Justices, upon the information of any Churchwarden or Overseer of the Parish in which such Town or Village Green or Land is situate, or of the person in whom the soil of such Town or Village Green or Land may be vested, forfeit and pay, in any of the cases aforesaid, and for each and every such Offence, over and above the Damages occasioned thereby, any sum not exceeding 40 Shillings;

(a) This Section of this Act is not of general application, but it is available for a certain number of Urban Authorities which possess Local Acts incorporating it.

And it shall be lawful for any such Churchwarden or Overseer or other person as aforesaid to sell and dispose of any such Manure, Soil, Ashes, and Rubbish, or other Matter or Thing as aforesaid ; and the proceeds arising from the sale thereof, and every such Penalty as aforesaid, shall, as regards any such Town or Village Green not awarded under the said Acts or any of them to be used as a Place for exercise and recreation, be applied in aid of the Rates for the repair of the public Highways in the Parish, and shall, as regards the land so awarded, be applied by the persons or person in whom the soil thereof may be vested in the due maintenance of such land as a place for Exercise and Recreation ;

A.D. 1857.

And if any Manure, Soil, Ashes, or Rubbish be not of sufficient value to defray the expense of removing the same, the person who laid or deposited such Manure, Soil, Ashes, or Rubbish shall repay to such Churchwarden or Overseer or other Person as aforesaid the money necessarily expended in the removal thereof ; and every such Penalty as aforesaid shall be recovered in manner provided by the Act of the Session holden in the 11th and 12th Years of Her Majesty, Chapter 43 ; and the amount of damage occasioned by any such Offence as aforesaid shall, in case of dispute, be determined by the Justices by whom the Offender is convicted ; and the payment of the amount of such damage, and the repayments of the money necessarily expended in the removal of any Manure, Soil, Ashes, or Rubbish, shall be enforced in like manner as any such Penalty.



## 22 VICT., C. 27.

*An Act to facilitate Grants of Land to be made near populous Places for the Use of regulated Recreation of Adults, and as Playgrounds for Children.<sup>(a)</sup> (19th April, 1859).*

A.D. 1859.

WHEREAS the want of open public Grounds for the resort and recreation of Adults, and of Playgrounds for Children and Youth, is much felt in the Metropolis and other populous Places within this realm, and by reason of the great and continuous increase of the population and extension of Towns such evil is seriously increasing, and it is desirable to provide a remedy for the same : Be it therefore enacted, &c.

1. Any Lands may be lawfully conveyed to Trustees, to be held by them as open public Grounds for the resort and recreation of Adults, and as Playgrounds for Children and Youth, or either of such purposes, and for any Estate, and subject to any reservation, restrictions, and conditions which the Donor or Grantor may think fit :

But this enactment shall not extend to authorise any lands to be so conveyed for any greater estate or interest than the Donor or Grantor would, independently of this Act, have power to dispose of.

Lands may be  
conveyed to  
trustees for  
public grounds  
&c.

(a) See an Article in 38 J.P., 258.

A.D. 1859.  
Form of Conveyance.

**2.** Any such Conveyance of Land to Trustees may be in the following form, subject to any modification thereof which the case may require.

' I A.B. do hereby convey and grant to as Trustees  
' for public Ground for the Parish [or Parishes] of  
' [*here describe the Lands conveyed or granted*], to be held by them as public Ground  
' for the Purposes of "The Recreation Grounds Act, 1859."

And it is hereby enacted, that the Grant or Conveyance of such lands shall not require enrolment, nor to be by Indenture, and shall be valid, although the Donor or Grantor shall die within twelve Calendar Months after the making of such Grant, any of the Provisions of the Act passed in the 9th Year of the Reign of King George the 2nd, Chapter 36, to the contrary notwithstanding.

Lands belonging to Municipal Corporations.

**3.** With respect to lands belonging to any Municipal Corporation, such Grant may be lawfully made by the Body Corporate, with the Consent of the Commissioners of Her Majesty's Treasury, signified by their executing the Deed of Conveyance.

Lands belonging to parishes.

**4.** With respect to lands belonging to any Parish, such Grant may and shall be made by the Trustees or Feoffees (if there shall be such), or otherwise by the Churchwardens and Overseers of the Parish, in pursuance of a resolution for that purpose of the Vestry or other Body having the management of the affairs of such Parish, passed in meeting duly assembled for the Purpose, and with the approbation of the Poor Law Board,<sup>(a)</sup> to be testified by their Seal being affixed to the Deed of Conveyance.

Trustees.

**5.** With respect to the appointment of Trustees for holding any such Grounds for the purpose aforesaid, the Lord of any Manor, or the Churchwardens of any Parish, or the Overseers of the Poor of any Parish or Township, or all or any of such persons to whom lands shall have been conveyed as aforesaid, shall be a Body Corporate for taking, holding, and disposing of such Grounds, and instituting, maintaining, and defending any proceedings relating thereto;

But the management and direction of the same shall be and remain in such persons as may be named in the Deed of Conveyance thereof;

And in case no such persons shall be so named, or there shall be a failure of such Managers and Directors, the Charity Commissioners for England and Wales shall have power to settle a Scheme for the appointment of the Managers and Directors.

By-Laws.

**6.** The Managers and Directors may from time to time make and enforce any such By-Laws, Orders, and Regulations for the management, preservation, disposition, and care of the said Grounds, and the government of all Persons using or frequenting the same, as shall be approved by the said Commissioners and in accordance with the conditions of the Grant;

And no By-Laws, Orders, or Regulations in any manner restricting the public use or enjoyment of the said Grounds shall be valid unless sanctioned with such Approbation.

Personal property may be bequeathed.

**7.** It shall be lawful for any person to bequeath any Personal Property, not exceeding £1000 in amount, for the purpose of defraying the expenses of purchasing, preparing, maintaining, and preserving such Grounds for the purposes aforesaid, and ornamenting the same.

Short Title.

**8.** This Act shall extend to England and Ireland only, and may be cited for all purposes by the Title of "The Recreation Grounds Act, 1859."

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(a) Now the Local Government Board, 34 & 35 Vict. 70, § 2.



## 23 & 24 VICT., c. 30.

**An Act to enable a Majority of Two-Thirds of the Ratepayers of any Parish or District, duly assembled, to rate their District in aid of Public Improvements for general Benefit within their District. (3rd July, 1860.)**

A.D. 1860.

**W**HEREAS it is expedient that facility should be given for the purpose of effecting local improvements beneficial to the health and comfort of the people: Be it therefore enacted, &c.

1. It shall be lawful for the Ratepayers of any Parish maintaining its own Poor, the population of which, according to the last account from time to time taken thereof by the authority of Parliament, exceeds 500 Persons, to purchase or lease lands, and to accept Gifts and Grants of Land, for the purpose of forming any Public Walk, Exercise or Play Ground, and to levy Rates for maintaining the same, and for removal of any Nuisances or Obstruction to the free use and enjoyment thereof, and for improving any open Walk or Footpath, or placing convenient seats, or shelters from rain, and for other purposes of a similar nature.

Ratepayers may hold Land, &c., for Public Walks, &c., and levy Rates.

2. This Act may be adopted for any Borough, or for any Parish having a population of 500 or upwards (according to the last account for the time taken by authority of Parliament), in the same manner as the Act of the 9th & 10th Victoria, Chapter 74, may be adopted in such Borough or Parish.

Adoption of Act, according to 9 & 10 Vict. 74, §§ 8 and 5.

3. Where the Act is adopted in a Borough or in such a Parish, the provisions of the Act of the 9th & 10th Victoria, Chapter 74, for the purposes below specified applicable in the like Cases where that Act is adopted, shall take effect for the purposes of this Act, viz.: all the provisions concerning

Procedure.

1. The Authority by which and the manner in which the Act is to be carried into execution:
2. The mode of providing the expenses of carrying the Act into execution (excluding the provisions for borrowing money for such expenses):
3. The appointment (in the case of a Parish) of Commissioners, the tenure of Office and procedure, and the Audit of their accounts:
4. The powers of the Councils and Commissioners for the purposes of the Act (except the powers of borrowing money).

4. After the adoption of this Act it shall be lawful for the Ratepayers in meeting assembled to rate such Parish to a separate Rate, to be called the "Parish Improvement Rate;"

A rate may be levied.

Provided that such Rate be agreed to by a majority of at least two-thirds in value of the Ratepayers assembled at such meeting.

5. Corporate Bodies shall be allowed to attend meetings to be held as aforesaid and to vote thereat by some person to be deputed by them for that purpose under their Corporate Seal.

Voting by Corporate Bodies.

6. Provided always, That previous to any such Rate being imposed a sum in amount not less than at least one half of the estimated cost of such proposed improvement shall have been raised, given, or collected by private subscription or donation.

Proviso.

7. Such Rate shall not exceed 6d. in the Pound.

Amount of rate.



26 VICT., C. 13.

A.D. 1863.

***An Act for the Protection of certain Garden or Ornamental Grounds in Cities and Boroughs.***  
***(4th May, 1863.)***

**W**HEREAS it is expedient to make provision for the better protection and charge of enclosed Garden or Ornamental Grounds which have been set apart for the use of the Inhabitants of any public Square, Crescent, Circus, Street, or other public Place surrounding or adjoining such Gardens or Grounds in any City or Borough: Be it enacted,

Public Gardens  
may be vested  
in a Corporate  
Authority;

or in a Com-  
mittee.

1. Where in any City or Borough any enclosed Garden or Ornamental Ground has been set apart otherwise than by the revocable permission of the Owner thereof in any public Square, Crescent, Circus, Street, or other public Place, for the use or enjoyment of the Inhabitants thereof, and where the Trustees, Commissioners, or other Body appointed for the care of the same have neglected to keep it in proper order, or where such Garden or Ground has not been vested in or placed under the management of any Trustees, Commissioners, or other Body for the care of the same, and from the want of such care, or from any other cause, has been neglected, the Metropolitan Board of Works, where the same is in any place under their jurisdiction, except the City of London (where the provisions of this Act shall be carried into effect by the Corporation of the said City), and the Corporate Authorities in any other City or Borough; shall take charge of the same, putting up a notice or notices to that effect in such Garden or Ornamental Ground, and if after due Inquiry the person entitled to any estate of Freehold in the same cannot be found, or if it shall be vested in any person by whom it is held, subject to any condition or reservation for keeping the same as and for a Garden or Pleasure Ground, or that the same shall not be built upon, but not otherwise, shall cause any buildings or other encroachment made therein within the period of 20 Years before the passing of this Act to be removed, and (if requested by a majority of two-thirds of the Owners and of the Occupiers of the houses surrounding the same) shall vest such Garden or Ornamental Ground in a Committee consisting of not more than 9 nor fewer than 3 of the rated inhabitants of such houses to be chosen annually by such inhabitants, in order that the same may be kept as a Garden or Ornamental Ground for the use of such inhabitants;

And the Vestry or Board of any and every Parish or District within which the same or any part thereof is situate shall from time to time cause to be raised the sums required by such Committee for defraying the expenses of the maintenance and management of such enclosed Garden or Ornamental Ground, or of such Part thereof as is situate within their Parish or District, by an addition to the General Rate to be assessed on the Occupiers of such houses;

Or if the said Owners and Occupiers shall not agree as aforesaid to undertake the charge of such Garden or Ornamental Ground, the Metropolitan Board of Works or Corporate Authority aforesaid shall, within six months after the notice hereinbefore mentioned shall have been put up within the same, or within such further time as the said Board or Authority may think it expedient to allow for such agreement to be come to, vest the same in such Vestries or Boards, who shall thenceforth take charge of and maintain the same as an open place or street in such manner as shall appear to them most advantageous to the Public, subject to the approval of the Metropolitan Board of Works or Corporate Authority, as the case may require;

Saving and always reserving to every person and persons, his and their heirs, executors, administrators, and assigns, all such estate, right, title, and interest as he, she, or they would or ought to have had and enjoyed of, in, to, from, or out of the Gardens and Grounds aforesaid in case this Act had not passed.

A.D. 1863.

**2.** And whereas it is expedient that the same should be carefully protected from undue encroachment, where any right to require that any Garden or Ornamental Ground as aforesaid be kept and maintained as such, or that the same shall not be built upon, shall belong to any person in right of any house or other property; and he shall by notice in writing signed by him addressed to the Metropolitan Board of Works where the same is in any place under their jurisdiction, except the City of London, where the same shall be addressed to the Corporation of the said City, or to the Corporate Authorities in any other City or Borough, requesting the said Metropolitan Board of Works or Corporate Authority to protect the right before mentioned, the said Metropolitan Board of Works or Corporate Authority, after due inquiry, may, if they shall think fit, accede to such request, and then and thereupon the right of such person to require that such Garden or Ornamental Ground to be maintained as such, or that the same shall not be built upon, shall thenceforth be vested in such Metropolitan Board of Works or Corporate Authority, who shall be fully empowered, for and in their own name, to exercise all the rights, powers, and privileges in relation thereto, and take such legal proceedings for asserting, defending, and protecting the same, as the said person might have exercised or taken.

Protection of open Spaces.

**3.** Any charge incurred by the Metropolitan Board of Works in the execution of this Act shall be deemed to be expenses of the said Board for payment whereof provision is made by the Act for the better local Management of the Metropolis; and the expenses incurred by any Corporate Authority shall be deemed to be expenses necessarily incurred by them in carrying into execution within and for their City or Borough the Act intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and any other Act amending the same.

Expenses.

5 &amp; 6 W.IV.76.

**4.** Where any such Garden or Ground is managed by any Committee of the inhabitants of any square, crescent, circus, street, or place, such Committee may make, and from time to time revoke and alter, By-Laws for the Management of the same, and for the preservation of the trees, shrubs, plants, flowers, rails, fences, seats, summer-houses, and other things therein, which By-Laws shall be entered in a book kept for that purpose by the Committee, signed by the Chairman of the meeting at which the same shall be passed, and which book shall and may be produced and read, and taken as evidence of such By-Laws, in all Courts whatever, and any inhabitant or servant, or other person admitted to such Garden by any inhabitant, offending against the same, after they shall have been duly allowed, as herein-after provided, upon proof thereof before a Magistrate acting for the District in which such Garden is situate, shall be liable for each offence to a Penalty not exceeding £5:

By-Laws.

Provided always, that such By-Laws shall not come into operation until the same shall have been allowed by some Judge of one of the Superior Courts, or by the Justices in Quarter Sessions; and it shall be incumbent on such Judge or Justices, on the request of such Committee, to inquire into any By-Laws tendered to them for that purpose, and to allow or disallow the same as they think meet.

**5.** Any Police Constable who shall see any person throwing any rubbish into any such Garden, or trespassing therein, or getting over the railings or fence, or stealing or damaging the flowers or plants, or committing any nuisance therein, may apprehend such person, under the authority hereby given to him;

Penalty for injuring Garden.

And any person convicted before any Magistrate acting for the District shall be liable for each and every offence aforesaid to a Penalty not exceeding 40s., or to Imprisonment for any period not exceeding 14 days;

And in case it shall be necessary to state in any proceedings the ownership of the property of such Garden, flowers, or plants, it shall be sufficient to describe the same as the property of the Committee by the name of *A.B.* and others.

**6.** The provisions contained in the 225th, 226th, 227th and 228th sections<sup>(a)</sup> of the Act passed in the Session of Parliament held in the 18th and 19th Years of the reign of Her most Gracious Majesty the Queen, Chapter 120, shall be incorporated in this

Certain Provisions of 18 &amp; 19 Vict. 120, incorporated with this Act.

(a) These are the sections which contain the Legal Procedure prescribed for carrying out that Act.

A.D. 1863.

11 & 12 Vict. 43,  
also to apply.Limitation of  
Act.

**Act, and shall apply to any Penalty or Forfeiture imposed by this Act, or any By-Law made in pursuance thereof, in and for every matter or thing done or omitted to be done within the Metropolitan District ; and the Act passed in the 12th Year of the Reign of Her Majesty the Queen, Chapter 43, <sup>(a)</sup> shall apply to every Penalty or Forfeiture imposed by this Act, or any By-Law made in pursuance thereof, for any matter or thing done or omitted to be done within any other part of England and Wales.**

**7. Nothing in this Act shall extend to or include any Garden, Ornamental Ground, or other land belonging to Her Majesty in right of Her Crown or of Her Duchy of Lancaster, or any Garden, Ornamental Ground, or other land for the time being under the management of the Commissioners for the time being of Her Majesty's Works and Public Buildings, or of the Commissioners for the time being acting under the "Crown Estate Paving Act, 1851," or to any Garden, Ornamental or other Ground, for which special provision is made for the due care and protection thereof by any Public or Private Act of Parliament.**

**8. Nothing in this Act shall extend to Scotland or Ireland.**



## 29 & 30 VICT., c. 122.

A.D. 1866.

### *An Act to make Provision for the Improvement, Protection, and Management of Commons near the Metropolis. (10th August, 1866.)*

Short Title.

**B**E it enacted, &c.

**1. This Act may be cited as The "Metropolitan Commons Act, 1866."**

Definition of  
Local Authority  
and Local Rate.

**2. For the purposes of this Act the Local Authority in relation to each Metropolitan Common shall be the Authority described as such in connection therewith in the First Schedule to this Act; and for the purposes of this Act the Local Rate in relation to each Metropolitan Common shall be the Rate described in connection therewith in the same Schedule.**

Interpretation  
of Terms.

**3. In this Act—**

The Term "Common" means land subject at the passing of this Act to any right of Common;<sup>(b)</sup> [and any land subject to be included under the provisions of the Act 8 and 9 Victoria, chapter 101]; the term "Commoner" means a Person having any such right of Common; the term "Manor" includes reputed Manor; and those terms as used in this Act respectively refer to any particular Common to which this Act applies, and to every person having a right of Common in, over, or affecting that Common, and to the Manor of the wastes whereof that Common is part :

The term "the Commissioners" means the Inclosure Commissioners for England and Wales, and the term "Assistant Commissioner" means the Assistant Commissioner appointed by the Inclosure Commissioners.

To what  
Commons Act  
applies.

**4. This Act shall apply to any Common the whole or any part whereof is situate within the Metropolitan Police District as defined at the passing of this Act (referred to in this Act as a Metropolitan Common).**

(a) This should be 11 & 12 Vict. 43. The Act alluded to is "Jervis's Act."

(b) The words within brackets are added by the Act, 32 & 33 Vict., 107, § 2 (post).

**5.** After the passing of this Act the Commissioners shall not entertain an application for the inclosure of a Metropolitan Common, or any part thereof; but nothing in this Act shall interfere with the carrying on and completion of proceedings under any Provisional Order of the Commissioners confirmed by Act of Parliament passed before or in the present Session; and notwithstanding any proceedings taken under any Act other than this Act, or any Provisional Order of the Commissioners made but not already confirmed by Act of Parliament, proceedings may be taken under this Act in relation to any Metropolitan Common.

A.D. 1866.  
Exclusion of  
Authority of  
Commissioners  
to inclose, &c.

**6.** A Scheme for the establishment of Local Management with a view to the expenditure of money on the drainage, levelling, and improvement of a Metropolitan Common, and to the making of By-Laws and Regulations for the prevention of nuisances and the preservation of order thereon, may be made under this Act, on a Memorial in that Behalf presented to the Commissioners by the Lord of the Manor or by any Commoners,<sup>(a)</sup> [or by any 12 or more Ratepayers, inhabitants of the Parish or Parishes in which the Metropolitan Common is situate], or by the Local Authority, or in case of a Common extending into the Districts of two or more of the Bodies described in the First Schedule to this Act, then by any one or more of such Bodies.

Memorial for  
Scheme as to  
Common.

**7.** On the presentation of any Memorial under this Act the Commissioners (if on consideration of the Memorial they think fit) may make such examination and inquiry as they think necessary or proper in relation to the subject matter of the Memorial.

Inquiry into  
Memorial.

**8.** On such examination and inquiry the Commissioners may, if they think fit, prepare the Draft of a Scheme respecting the Common or any part thereof.

Preparation of  
Draft Scheme.

**9.** Where the Commissioners prepare the Draft of a Scheme they shall cause it to be printed, and printed Copies of it to be delivered to the Memorialists and to the Lord of the Manor and to the Local Authority, and shall also cause it, or a proper Abstract of it, to be published and circulated in such manner as they think sufficient for giving information to all parties interested.

Printing and  
Publication of  
Draft Scheme.

**10.** During two months after the first publication of the Draft of a Scheme the Commissioners shall receive any objections or suggestions made to them in writing respecting the Scheme.

Objections and  
Suggestions as  
to Scheme.

**11.** At any time after the expiration of those two Months, the Commissioners, if they think fit, may refer the Draft of the Scheme to an Assistant Commissioner.

Inquiry into  
Scheme by  
public Sittings.

On any such reference the Assistant Commissioner shall proceed to make an Inquiry concerning the subject matter of the Scheme, and for that purpose to hold a Sitting or Sittings in some convenient place in the neighbourhood of the Common, and thereat to take and receive any evidence and information offered, and hear and inquire into any objections or suggestions made or to be made during the Sitting or Sittings, respecting the Scheme or the Common, with power from time to time to adjourn any Sitting.

Notice shall be published, in such manner as the Commissioners direct, of every such Sitting (except an adjourned Sitting), 14 Days at least before the holding thereof.

**12.** The Assistant Commissioner to whom the Draft of a Scheme is referred shall make a Report in writing to the Commissioners setting forth the result of the Inquiry, and whether in his opinion the Draft of the Scheme should be approved with or without alteration, and if with any, then with what alteration, and his reasons for the same, and the objections and suggestions, if any, made on the inquiry, and his opinion thereon.

Report of  
Assistant Com-  
missioner.

**13.** As soon as may be after the expiration of the said two months, or the receipt by the Commissioners of the Report of the Assistant Commissioner (as the case may be), the Commissioners shall proceed to consider any objections or suggestions made to them in writing respecting the Scheme, and the Report (if any), and thereupon they shall, if they think fit, finally settle and approve of the Scheme in such form as they think expedient.

Final Settle-  
ment and  
Approval of  
Scheme.

**14.** Every Scheme shall state what rights (if any) claimed by any person or class of persons are affected by the Scheme, and in what manner and to what extent they are affected thereby, and whether or not the Scheme has been in relation thereto consented to by that person or class of persons, or any of them.

Scheme to  
state Rights  
affected.

(a) The words within brackets are added by the Act, 32 & 33 Vict., 107, § 3 (*post*).

A.D. 1866.  
Provision for  
Compensation.

**15.** No estate, interest, or right of a profitable or beneficial nature in, over, or affecting a Common shall, except with the consent of the person entitled thereto, be taken away or injuriously affected by any Scheme, without compensation being made or provided for the same, and such compensation shall, in case of difference, be ascertained and provided in the same manner as if the same compensation were for the compulsory Purchase and taking or the injurious affecting of lands under the provisions of The "Lands Clauses Consolidation Act, 1845," and The "Lands Clauses Consolidation Acts Amendment Act, 1860."

Appeal against  
Determination  
of Commis-  
sioners.

**16.** If any person claiming any estate, interest, or right in, over, or affecting the Common to which any Scheme relates is dissatisfied with any determination made or implied by the Commissioners or by the Scheme concerning any estate, interest, or right in, over, or affecting the Common, every such Person may obtain a decision thereon in an Action at Law in the manner provided by section 56 of the General Act to facilitate the Inclosure and Improvement of Commons, passed in the Session of the 8th and 9th Years of the Reign of Her present Majesty, Chapter 118.

8 & 9 Vict. 118,  
§ 56.

Printing and  
Sale of Scheme.

**17.** Every scheme shall contain a provision for the sale at all Times of printed Copies thereof to all persons desiring to buy the same, at a price not exceeding a reasonable sum to be fixed by the Scheme.

Scheme  
approved to be  
certified.

**18.** Every Scheme, when approved by the Commissioners, shall be certified by them, and sealed with their Common Seal.

Printing and  
Publication of  
Scheme.

**19.** Where the Commissioners certify a Scheme they shall cause printed Copies of it to be delivered to the Memorialists and to the Lord of the Manor and to the Local Authority, and shall also cause it, or a proper Abstract of it, to be published and circulated in such manner as they think sufficient for giving information to all parties interested.

Annual Report  
to be laid before  
Parliament.

**20.** The Commissioners shall in the month of February in every year make a separate Report to Her Majesty of all their proceedings under this Act during the year ending the 31st Day of December then last past.

The Report shall be laid before both Houses of Parliament within 14 days after the making thereof, if Parliament is then sitting, and if not, then within 14 Days after the next Meeting of Parliament.

Contents of  
Report.

**21.** The Commissioners in such annual Report shall set forth in full every Scheme certified by them during the year to which the Report relates, and shall state the grounds of their approval thereof, and the Objections, if any, made thereto and overruled, and all proceedings had in respect of those Objections, and the grounds on which they were over-ruled.

Confirmation of  
Scheme by  
Parliament.

**22.** A Scheme certified by the Commissioners shall not of itself have any operation, but the same shall have full operation when and as confirmed by Act of Parliament, with such modifications, if any, as to Parliament seem fit.

Reference of  
Scheme to  
Select Com-  
mittee if  
opposed.

**23.** If in the progress through Parliament of a Bill confirming any Scheme certified by the Commissioners a Petition is presented to either House of Parliament against the Scheme, the Bill, as far as it relates to the Scheme petitioned against, may be referred to a Select Committee, and the Petitioner shall be allowed to appear and oppose as in case of a Private Bill.

Expenses of  
Scheme to be  
defrayed by  
Memorialists,  
&c.

**24.** All expenses incurred by the Commissioners in relation to any Memorial, or to any Scheme consequent thereon, shall be defrayed by the Memorialists, or by any Ratepayers or Inhabitants of the Parish or District in or near to which the Common is situate, or of the Metropolis, willing and offering to defray those expenses, or by the Local Authority if willing and offering to defray the same ; and the Commissioners may, if they think fit, on or at any time after the presentation of the Memorial, require the Memorialists or those Ratepayers or Inhabitants, or any of them, or the Local Authority having offered as aforesaid, (as the case may be,) to pay to the Commissioners such Sum as the Commissioners think requisite for or on account of those expenses, or to give Security to the satisfaction of the Commissioners for the payment of those expenses on demand.

Power for  
Local Authority  
to contribute  
for Purposes of  
Scheme.

**25.** The Local Authority may in relation to any Metropolitan Common for which they are the Local Authority, and the Metropolitan Board of Works may in relation to any Metropolitan Common (although not one for which they are the Local Authority), contribute such amount as they think fit (in a gross sum or by annual payments or otherwise) towards the expenses of executing any Scheme under this

Act when confirmed by Act of Parliament, including the payment of the compensation (if any) to be paid in pursuance thereof.

A.D. 1866.

**26.** All expenditure incurred by a Local Authority under this Act shall be defrayed by them out of the Local Rate, and all expenditure incurred by the Metropolitan Board of Works under this Act, in cases where they are not the Local Authority, shall be defrayed by them out of the Rate which in the First Schedule to this Act is described as the Local Rate in connection with the Metropolitan Board of Works; and the amount requisite in that behalf respectively shall be raised by means of such respective Rate accordingly.

Expenses of  
Local Authority  
to be paid out of  
Local Rate.

**27.** The Commissioners may from time to time approve and certify a Scheme for amending any Scheme confirmed by Act of Parliament, and all the provisions of this Act relative to an original Scheme shall apply also to an amending Scheme, *mutatis mutandis*.

Amendment of  
Schemes.

**28.** Where any Lord of a Manor, Commoner, or other person having any estate, interest, or right in, over, or affecting a Common is under the disability of infancy, lunacy, or coverture, or other legal disability, or is beyond the seas, his or her Guardian, Trustee, Committee of the estate, husband, or Attorney (as the case requires), or in default thereof a person nominated in that behalf by the Commissioners under their Common Seal (which nomination they are hereby empowered to make as occasion requires), shall for the purposes of this Act be deemed to be substituted in the place of such Lord, Commoner, or other person.

Provision for  
Cases of  
Disability.

**29.** Where any estate, interest, or right in, over, or affecting a Common belongs to or is enjoyed by Her Majesty, Her Heirs or Successors, in right of the Crown, or forms part of the possessions of the Duchy of Lancaster or of the Duchy of Cornwall, any consent for the purposes of any Scheme under this Act may be given in respect of that estate, interest, or right as follows; namely,—

Consent with  
respect to  
Crown or  
Duchy Rights.

In the first-mentioned case, if the estate, interest, or right is under the management of the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, then by those Commissioners or one of them with the approval of the Commissioners of Her Majesty's Treasury; and if it is under the management of the Commissioners of Her Majesty's Works and Public Buildings, then by the last-mentioned Commissioners, with the like approval:

In the secondly-mentioned case by the Chancellor of the Duchy of Lancaster, by writing under his hand attested by the Clerk of the Council of the Duchy:

In the thirdly-mentioned case by the Duke of Cornwall, or other the persons for the time being empowered to dispose for any purpose of lands of the Duchy of Cornwall.

**30.** Any Lord of a Manor, Commoner, or other person having any estate, interest, or right in, over, or affecting a Common may, by a Power of Attorney in writing under his hand (which shall be exempt from Stamp Duty), appoint an Agent to act for him for the purposes of any Memorial or Scheme under this Act.

Power for  
Lord of Manor,  
etc., to appoint  
Agent.

All Things by this Act directed or authorized to be done by or with relation to any Lord of a Manor, Commoner, or other person as aforesaid may be lawfully done by or with relation to his Agent so appointed.

Every such Agent may, in the name and on behalf of his Principal, sign, concur in, and execute any Memorial or Act, or signify consent or dissent on any matter arising out of the execution of this Act.

Every person shall be bound by the Acts of any such Agent according to the authority committed to him as fully as if the Principal had himself acted.

Every such Power of Attorney, or a copy thereof examined and authenticated as a true copy by the signature of a witness or witnesses, shall be deposited with the Commissioners.

Any such Power of Attorney may be in the form given in the Second Schedule to this Act or to the like effect.

**31.** Where any estate, interest, or right in, over, or affecting a Common is by Deed conveyed for the purposes of a Scheme under this Act, with the approval of the Commissioners, the provisions of the Act of the 9th Year of the Reign of King George the Second (Chapter 36), "to restrain the Disposition of Lands whereby the same become unalienable," shall not apply to the Conveyance.

Provision for  
Conveyance to  
Commissioners,  
s. G. II. 36.

A.D. 1866.  
Power for  
Crown to vest  
Manorial, &c.,  
Rights in  
Commissioners.

**32.** Notwithstanding anything in any other Act, it shall be lawful for Her Majesty, Her Heirs or Successors, from time to time, for the purposes of a Scheme under this Act, to grant to any persons or Body, for such estate or interest, and on such terms and subject to such conditions as to Her Majesty, Her Heirs or Successors, seem meet, all or any part or parts of the open and uninclosed lands being wastes of the Royal Manor of East Greenwich in the County of Kent, and also to so grant all or any of the rights of Common which Her Majesty, Her Heirs or Successors, has or have for the time being in, over, or affecting any Metropolitan Common, and which might by Law be so granted by a private person entitled absolutely thereto, and in every such case such persons or Body, their heirs, successors, executors, or administrators, shall have full capacity to take and hold the same lands or rights.

Whenever it is the pleasure of Her Majesty, Her Heirs or Successors, to make a Grant as aforesaid, the Commissioners of Her Majesty's Treasury may issue a Warrant to such persons or Body.

Every such Warrant shall be exempt from Stamp Duty, and shall be inrolled as conveyances of lands forming part of the Land Revenues of the Crown in England are required to be inrolled, and the Inrolment thereof shall be certified at the foot or on the back thereof by the proper Officer by whom the same is inrolled under his hand, and the same when inrolled shall be returned with the Certificate of Inrolment to the Grantee named in the Warrant.

From and immediately after the Inrolment of the Warrant the Grantees by force of this Act shall be deemed to be in the actual seisin or possession of the lands or rights in the Warrant specified, and shall hold and enjoy the same, according to the Warrant, for the purposes therein specified.

## S C H E D U L E S.

### THE FIRST SCHEDULE.

#### *Description of Local Authority and Local Rate.*

Metropolitan Common.	Local Authority.	Local Rate.
A Metropolitan Common, the whole or any part whereof is situate within the Metropolis as defined by The Metropolis Management Act, 1855.	The Metropolitan Board of Works.	The Rate leviable for defraying the Expenses of the Board in the Execution of The Metropolis Management Act, 1855, and the Acts amending the same.
A Metropolitan Common, the whole or any Part whereof is situate within the District of a Local Board constituted under The Public Health Act, 1848, and The Local Government Act, 1858, or One of them, and no Part whereof is situate within the Metropolis as defined as aforesaid.	The Local Board.	The General District Rate.
Any other Metropolitan Common.	The Vestry of the Parish in which the Common or any Part thereof is situate.	The Poor Rate.

## THE SECOND SCHEDULE.

*Form of Power of Attorney.*

## THE METROPOLITAN COMMONS ACT, 1866.

I, A.B. of \_\_\_\_\_ in pursuance of the above-mentioned Act, appoint  
 of \_\_\_\_\_ to be my Agent for all the Purposes of that  
 Act [or for a specified Purpose under the Act.]  
 Dated this \_\_\_\_\_ Day of \_\_\_\_\_ 18\_\_\_\_\_.  
 (Signed) A.B.  
 Witness \_\_\_\_\_  
 C.D.



## 32 &amp; 33 VICT., c. 107.

## An Act to amend the Metropolitan Commons Act, 1866. (11th August, 1869.)

A.D. 1869.

**B**E it enacted, &c.

1. This Act may be cited as "The Metropolitan Commons Amendment" Short Title.  
 Act, 1869."

2. The following words shall be added to the interpretation of the term "common" in the 3rd clause of the "Metropolitan Commons Act, 1866;" namely, "and any land subject to be included under the provisions of the 8th and 9th Victoria, chapter 118."

Extension of interpretation of term "common" in 29 & 30 Vict. 122.

3. A scheme may be made, under the "Metropolitan Commons Act" (1866), on a memorial in that behalf presented to the Commissioners by any 12 or more ratepayers, inhabitants of the parish or parishes in which the Metropolitan Common is situate, as well as by any such person, persons, or body as is or are described in section 6 of the said Act.

Extension of right to memorialize.



## 34 VICT., c. 13.

## An Act to facilitate Gifts of Land for Public Parks, Schools and Museums. (25th May, 1871.)

A.D. 1871.

**W**HEREAS it is expedient to facilitate gifts of land for the purpose of forming public parks, schools and museums:

Be it therefore enacted, &c.

1. This Act may be cited as the "Public Parks, Schools and Museums Act, 1871." Short Title.

A.D. 1871.

**2.** This Act shall not extend to Scotland or Ireland.Interpretation :  
"Public park."**3.** In the construction of this Act, the words "public park" shall include any park, garden, or other land dedicated or to be dedicated to the recreation of the public;"Elementary  
School."

The words "elementary school" shall mean a school or department of a school at which elementary education is the principal part of the education there given, and shall not include any school or department of a school at which the ordinary payments in respect of the instruction from each scholar exceed 9d. a week;

"School-house."

The word "school-house" shall include the teachers dwelling-house, and the playground (if any), and the offices and all premises belonging to or required for a school;

"Public  
museum."

And the words "public museum" shall include any buildings used or to be used for the preservation of any collection of paintings or other works of art, or of any objects of natural history, or of any mechanical or philosophical inventions, instruments, models, or designs, and dedicated or to be dedicated to the recreation of the public, together with all libraries, reading-rooms, laboratories, and other offices and premises used or to be used in connection therewith.

Gifts &c., of land  
or of money to  
be laid out in  
land exempted  
from Mortmain  
Acts.**4.** From and after the passing of this Act all gifts and assurances of land of any tenure, and whether made by deed or by will or codicil, for the purposes only of a public park, a school-house for an elementary school, or a public museum, and all bequests of personal estate to be applied in or towards the purchase of land for all or any of the same purposes only, shall be valid notwithstanding the statute of the 9th George the 2nd, chapter 36, and other statutes commonly known as the Statutes of Mortmain.Proviso as to  
time.**5.** Provided, that every will or codicil containing any such gift or assurance and every deed containing any such gift or assurance and made otherwise than for full and valuable consideration, shall in order to enable such gift or assurance to take effect under this Act, be made 12 calendar months at least before the death of the testator or grantor, and shall be enrolled in the books of the Charity Commissioners within 6 calendar months next after the time when the same will, codicil, or deed shall come into operation.Will &c., to be  
enrolled.**6.** Nothing in this Act shall authorise any gift by will or codicil of more than 20 acres of land for any one public park, or of more than 2 acres of land for any one public museum, or of more than 1 acre of land for any one school-house.Limit of land.  
Not to invalidate,  
&c., any  
gifts, &c., other-  
wise valid.**7.** Nothing in this Act contained shall invalidate or impose any restriction or condition upon any gift or assurance which would have been valid and free from such restriction or condition if this Act had not been passed.

## 38 &amp; 39 VICT., c. 55.

A.D. 1875.

*An Act for consolidating and amending the Acts relating to Public Health in England.*

(11th August, 1875.)

Urban  
authority may  
provide places  
of public  
recreation.**164.** Any Urban Authority may purchase, or take on lease, lay out, plant, improve and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever.

Any Urban Authority may make By-Laws for the regulation of any such public walk or pleasure ground, and may by such By-Laws provide for the removal from such public walk or pleasure ground of any person infringing any such By-Law by any officer of the Urban Authority or Constable.



## 39 &amp; 40 VICT., C. 56.

## ARRANGEMENT OF CLAUSES.

Clause

1. Short title.

A.D. 1876.

## PART I.

## LAW AS TO THE REGULATION AND INCLOSURE OF COMMONS.

*Applications in relation to Commons.*

2. Alternative provisional order for regulation or inclosure of commons.
3. "Regulation of common" includes adjustment of rights and improvement.
4. Explanation of adjustment of rights.
5. Explanation of improvement.
6. Meaning of provisional order for inclosure of common.
7. Provisions for the benefit of a neighbourhood applicable alike to orders for regulation and orders for inclosure.

*Suburban Commons.*

8. Sanitary authorities to be represented in the case of commons in the neighbourhood of towns.

*Procedure.*

9. Issue of forms by Commissioners.
10. Rules as to application to Commissioners.
  - (1.) Publication of notices of application.
  - (2.) Manner of application.
  - (3.) Evidence to be furnished in support of application.
  - (4.) Evidence in relation to benefit of neighbourhood.
  - (5.) Evidence in relation to private interests.
  - (6.) Duty of Commissioners on application.
11. Rules as to local inquiry.
  - (1.) Inspection and public meeting.
  - (2.) Notice of meeting.
  - (3.) Contents of notice.
  - (4.) Publication of notice.
  - (5.) Conduct of meeting.
  - (6.) Personal inquiries by Assistant Commissioner.
  - (7.) Report of Assistant Commissioner to Inclosure Commissioners.
  - (8.) Map to accompany report.
12. Rules as to provisional orders.
  - (1.) Draft provisional order to be framed.
  - (2.) Provisions for benefit of neighbourhood.
  - (3.) Provisions for protection of private interests.
  - (4.) Deposit of draft order for consideration of parties interested.
  - (5.) Consents before provisional order certified to be expedient.
  - (6.) Reservation in favour of freemen interested in Common.
  - (7.) Means of obtaining consents.
  - (8.) Power to modify provisional order before expediency certified.
  - (9.) Certificate of expediency of provisional order.
  - (10.) Confirmation of provisional order.
  - (11.) Supplemental power to modify provisional order after expediency certified.

A.D. 1876.

- 13.** Partial application of procedure under Inclosure Acts.  
**14.** Power to raise money for improvement of common.

*Supplemental Provisions.*

- 15.** Owners may make By-Laws.  
**16.** Provision as to By-Laws.  
**17.** Notice of application for confirmation of By-Laws.  
**18.** Provision as to certain expenses under order for regulation of a common  
**19.** Definition of power of Charity Commissioners in certain cases.  
**20.** Gravel digging.

**PART II.****AMENDMENT OF THE INCLOSURE ACTS.***Field Gardens and Recreation Grounds.*

- 21.** Expenses of clearing, draining, and fencing field gardens.  
**22.** Substituted allotments for recreation grounds and field gardens.  
**23.** Situation of allotments for recreation grounds and field gardens.  
**24.** Field gardens to be free of rentcharge.  
**25.** Allotments for recreation grounds to be vested in churchwardens and overseers.  
**26.** Amendment of law as to letting field gardens.  
**27.** Application of surplus rents of recreation grounds and field gardens.  
**28.** Reports to be made by managers of recreation grounds and field gardens.  
**29.** Amendment of law as to town and village greens.  
**30.** Jurisdiction of county court in respect of illegal inclosures.  
**31.** Three months notice of claim to inclose to be given in the local papers.  
**32.** Appointment of Valuer to be confirmed by Commissioners.

*General Amendment.*

- 33.** Extension of sec. 105 of the "Inclosure Act, 1845," as to exchanges and partitions.

**PART III.***Miscellaneous.*

- 34.** Repeal of certain parts of the "Inclosure Act, 1845," and amendment of law as to reports.  
**35.** Act not to apply to metropolitan commons.  
**36.** A common regulated under Act not to be inclosed without sanction of Parliament.

*Definitions.*

- 37.** Definitions.

**SCHEDULE.**

***An Act for facilitating the regulation and improvement of Commons, and for amending the Acts relating to the Inclosure of Commons.***  
***(11th August, 1876.)***

**W**HEREAS by the "Inclosure Acts, 1845 to 1868," upon the application and with the consent of such of the persons interested in any common as in the said Acts in that behalf specified, the Inclosure Commissioners are empowered by provisional order under their seal to authorise the inclosure of such

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common, provided such inclosure is made on such terms and conditions as may appear to the Commissioners to be proper for the protection of any public interests, and provided also that the Commissioners are of opinion that such inclosure would be expedient, having regard as well to the health, comfort, and convenience of the inhabitants of any cities, towns, villages, or populous places in or near any parish in which the land proposed to be enclosed, or any part thereof, may be situate (hereinafter included under the expression "the benefit of the neighbourhood"), as to the advantage of the persons interested in the common to which such application relates (hereinafter included under the expression "private interests"); but such provisional order is of no validity until and unless the Commissioners have in a report to be laid before Parliament certified that in their opinion the inclosure of such common, if made on the terms and conditions in their provisional order expressed, would be expedient, having regard to the benefit of the neighbourhood as well as to such private interests as aforesaid, nor until and unless an Act of Parliament has been passed confirming such order and affirming such certificate as aforesaid, and directing that the proposed inclosure of the common should be proceeded with accordingly:

And whereas by the said Inclosure Acts, information is required to be supplied and inquiries to be made for the purpose of enabling the Inclosure Commissioners to judge of such expediency as aforesaid, but it is desirable to make further provisions for bringing under the notice of the said Commissioners, and of Parliament, any circumstances bearing on the expediency of allowing the inclosure of a common, and that inclosure in severalty as opposed to regulation of commons should not be herein-after made unless it can be proved to the satisfaction of the said Commissioners and of Parliament that such inclosure will be of benefit to the neighbourhood as well as to private interests, and to those who are legally interested in any such commons:

And whereas by the said Inclosure Acts the Commissioners are empowered in the case of a common being waste land of a manor to require, and in their provisional order to specify as one of the conditions of inclosure, the appropriation of an allotment for the purposes of exercise and recreation by the inhabitants of the neighbourhood, and also of an allotment for the labouring poor, and it is expedient to give further effect to the provisions relating to the said allotments (in this Act referred to as allotments for recreation grounds and field gardens):

And whereas it is expedient to give further facilities for enabling the Inclosure Commissioners to regulate, improve, stint, and otherwise deal with commons without wholly inclosing and allotting the same in severalty:

Be it enacted, &c.

1. This Act may be cited for all purposes as the "Commons Act, 1876."

Short Title.

## PART I.

### LAW AS TO THE REGULATION AND INCLOSURE OF COMMONS.

#### *Applications in relation to Commons.*

2. The Inclosure Commissioners may entertain an application made in manner in this Act mentioned for a provisional order—

(1.) For the regulation of a common; or

(2.) For the inclosure of a common or parts of a common;

Further, an application may be made as respects the same common for the regulation of part of such common, specifying the part to be regulated, and for the inclosure of the residue, and in such case the application shall be dealt with as respects such parts as if they were separate commons, with this exception, that the boundaries as proposed in the application of the part to be regulated and the part to be inclosed may be modified by the provisional order.

The Commissioners shall not proceed to carry any application under this Act into effect until it is made to appear to them that the persons making the application represent at least one-third in value of such interests in the common as are proposed to be affected by the provisional order.

Alternative  
provisional  
order for  
regulation or  
inclosure of  
commons.

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"Regulation of  
common"  
includes  
adjustment of  
rights and  
improvement.

Explanation of  
"adjustment of  
rights."

**3.** A provisional order for the regulation of a common may provide, generally or otherwise, for the adjustment of rights in respect of such common, and for the improvement of such common, or for either of such purposes, or for any of the things by this Act comprised under the expression "adjustment of rights" or "improvement of a common," or may state that all or any of such subjects are to be provided for in the proceedings subsequent to the confirmation of the provisional order by Parliament.

**4.** The adjustment of rights in respect of a common comprises for the purposes of this Act all or any of the following things :

- (1.) As respects rights of common of pasture in a common, being waste land of a manor,—the determination of the persons by whom, the stock by which, and the times at which such common of pasture is to be exercised ;
- (2.) As respects rights of common of turbary, or taking of estovers, or taking gravel, stone, or otherwise interfering with the soil of the common, being waste land of a manor,—the determination of the persons by whom, and the mode and place or places in which, and the times at which such rights are to be exercised, also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction, modification, or abolition of all or any of such rights which may permanently injure the common ;
- (3.) As respects rights of common in land which is not waste land of a manor,—the stinting or other determination of such rights, and the persons by whom, and the mode in which, and the times at which such rights are to be exercised, as also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction, modification, or abolition of all or any of such rights which may be injurious to the general body of the commoners or to the proper cultivation of the land ;
- (4.) As respects any common whether it is or is not waste land of a manor,—the determination of the rights and obligations of the lord of the manor, severalty owners, or other person or persons entitled to the soil of such common, as also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction, modification, or abolition of all or any of such rights, and in particular in the case of severalty owners of all or any of such rights which may be injurious to the general body of the severalty owners or to the proper cultivation of the land ; and
- (5.) Generally as respects any common, whether it is or is not waste land of a manor,—the determination of any rights and settlement of any disputes relating to boundaries, rights in the soil or in the produce of the soil, or otherwise, whether arising between the commoners themselves, or between the commoners in relation to the lords of the manors, severalty owners, or other person or persons entitled to the soil of the common, which settlement may be conducive to the interests of all or any class of persons interested in the common.

Explanation of  
"improvement."

**5.** The improvement of a common comprises for the purposes of this Act all or any of the following things ; that is to say,

- (1.) The draining, manuring, or levelling the common ; and
- (2.) The planting trees on parts of such common, or in any other way improving or adding to the beauty of the common ; and
- (3.) The making or causing to be made By-Laws and regulations for the prevention of or protection from nuisances or for keeping order on the common ; and
- (4.) The general management of such common.
- (5.) The appointment from time to time of conservators of the common for the purposes aforesaid.

Meaning of  
"provisional  
order."

**6.** A provisional order for the inclosure of a common means a provisional order for inclosing the common as provided by the "Inclosure Acts, 1845 to 1868," as amended by this Act.

Provisions for  
the benefit of a  
neighbourhood  
applicable alike  
to orders for  
regulation and  
orders for  
inclosure.

**7.** In any provisional order in relation to a common, the Inclosure Commissioners shall, in considering the expediency of the application, take into consideration the question whether such application will be for the benefit of the neighbourhood, and shall, with a view to such benefit, insert in any such order such of the following terms and conditions (in this Act referred to as statutory provisions for the benefit of the neighbourhood) as are applicable to the case ; that is to say, .

- (1.) That free access is to be secured to any particular points of view ; and
- (2.) That particular trees or objects of historical interest are to be preserved ; and
- (3.) That there is to be reserved, where a recreation ground is not set out, a privilege of playing games or of enjoying other species of recreation at such times and in such manner and on such parts of the common as may be thought suitable, care being taken to cause the least possible injury to the persons interested in the common ; and
- (4.) That carriage roads, bridle paths, and footpaths over such common are to be set out in such directions as may appear most commodious ; and
- (5.) That any other specified thing is to be done which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood.

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*Suburban Commons.*

**8.** Notice of any application under this Act in relation to a common which is situate either wholly or partly in any town or towns, or within 6 miles of any town or towns (which common so situate is in this Act referred to as a suburban common) shall be served as soon as may be on the urban sanitary authority or authorities having jurisdiction over such town or towns, and it shall be lawful for the urban sanitary authority of any such town to appear before the Assistant Commissioner on the occasion of his holding a local inquiry as in this Act mentioned, and also to appear before the Inclosure Commissioners, and to make to him or them, at any time during the proceedings in relation to obtaining a provisional order under this Act, such representations as they may think fit with respect to the expediency or inexpediency of such application, regard being had to the health, comfort, and convenience of the inhabitants of the town over which such authority has jurisdiction, and to propose to him or them such provisions as may appear to such urban sanitary authority to be proper, regard being had as aforesaid.

Sanitary authorities to be represented in the case of commons in the neighbourhood of towns.

Any urban sanitary authority entitled to receive notice of an application in relation to a suburban common may, with the sanction of the Inclosure Commissioners, enter into an undertaking to contribute out of their funds for or towards the maintenance of recreation grounds, or of paths or roads, or the doing any other matter or thing for the benefit of their town in relation to the common to which such application relates.

They may also, in relation to any such common, and with such sanction as aforesaid, enter into an undertaking to pay compensation in respect to the rights of commoners, for the purpose of securing greater privileges for the benefit of their town.

An urban sanitary authority may acquire by gift and hold without license in mortmain or trust for the benefit of their town any suburban common in respect of which they would be entitled to receive notice of any application made to the Inclosure Commissioners in pursuance of this Act, and any rights in such a common.

They may also in the case of any such suburban common purchase and hold as aforesaid, with a view to prevent the extinction of the rights of common, any saleable rights in common or any tenement of a commoner having annexed thereto rights of common.

They may also, with the consent of persons representing at least one-third in value of such interests in a suburban common as aforesaid as are proposed to be affected by the provisional order, make an application to the Inclosure Commissioners for the regulation of such common with a view to the benefit of their town and the improvement of such common.

Where an urban sanitary authority makes an application under this Act with such consent as aforesaid in respect of the regulation of a common, or undertakes to make any contribution or to pay any compensation or make any other payment out of its funds in respect of a common, such urban sanitary authority may, if the Inclosure Commissioners deem it advisable, having regard to the benefit of the neighbourhood as well as to private interests, be invested with such powers of management or other powers as may be expedient.

The expenses incurred by an urban sanitary authority in pursuance of this section may be defrayed out of any rate applicable to the payment of expenses incurred by such authority in the execution of the " Public Health Act, 1875," and not otherwise provided for.

A town for the purposes of this section means any municipal borough, or Improvement Act District, or Local Government District, having a population of not less than 5000 inhabitants.

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The population of any town for the purposes of this Act shall be reckoned according to the last published census for the time being, and distances shall be measured in a direct line from the town hall, or if there shall be no town hall, then from the cathedral or church, if there shall be only one church, or if there be more churches than one, then from the principal market place of such town to the nearest point of the suburban common. When part only of a common is situate within the aforesaid distance from a town, such part shall be deemed for the purposes of this section to be a common separate and distinct from the part situated without and beyond such distance.

#### *Procedure.*

Issue of forms by Commissioners.

9. The Inclosure Commissioners shall from time to time, upon application made by the persons interested in any common, issue<sup>(a)</sup> in such form as they may deem expedient information and directions as to the mode in which applications for the regulation or inclosure of commons under the "Inclosure Acts, 1845 to 1868," as amended by this Act are to be made to the Commissioners, with such explanations as they may think fit with respect to the law for the regulation and inclosure of commons, and the persons so interested may apply accordingly in manner directed by the Inclosure Commissioners.

Rules as to application to Commissioners.

10. The following rules shall be observed with respect to an application to the Inclosure Commissioners for a provisional order for the regulation or inclosure of a common; that is to say,

Publication of notices of application.

(1.) The applicants previously to making their application shall publish, in such manner as the Inclosure Commissioners may from time to time, by general or special order, direct, an advertisement giving notice of their intention to apply for such provisional order, and shall also serve a like notice on any urban sanitary authority entitled under this Act to receive such notice: Provided that such advertisement as aforesaid shall always be inserted in at least one paper circulating in the neighbourhood of the common to which the application relates:

Manner of application.

(2.) The application shall be in writing, accompanied with a map of the common, or part thereof, and, if for the regulation of a common, shall express whether the applicants propose that all or certain specified provisions only of this Act for the adjustment of rights or improvement of commons should be put in force in relation to such common, and whether to apply to the whole or part of such common, but, subject as aforesaid, an application for the regulation or inclosure of a common shall be in such form and be made in such manner as the Inclosure Commissioners may from time to time direct:

Evidence to be furnished in support of application.

(3.) On making their application in respect of any common, the applicants shall furnish the Inclosure Commissioners, in answer to questions previously submitted or otherwise in such manner as the said Commissioners may from time to time direct, with information bearing on the expediency of the application considered in relation to the benefit of the neighbourhood as well as to private interests:

Evidence in relation to benefit of neighbourhood.

(4.) The information to be furnished as bearing on the expediency of the application, considered in relation to the benefit of the neighbourhood, shall comprise statements as to the particulars following; that is to say, as to the number and occupation of the inhabitants of the parish or place in which the common is situate; as to the population of the neighbourhood, and the distance of the common from any neighbouring towns and villages; as to the intention of the applicants to propose the adoption of all or any of the statutory provisions as defined by this Act for the benefit of the neighbourhood; as to the circumstance of any ground other than the common to which the application relates being available for the recreation of the neighbourhood; and in the case of a common being waste land of a manor, as to the site, extent, and suitableness of the allotments, if any, proposed to be made for recreation grounds and field gardens, or for either of such purposes; and as to any other matter which in the judgment of the Inclosure Commissioners may assist them in forming an opinion as to whether such application ought to be acceded to, having regard to the benefit of the neighbourhood, and if acceded to, as to what statutory provisions as defined by this Act ought to be inserted in the provisional order for the benefit of the neighbourhood:

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(a) The Inclosure Commissioners have issued papers to carry out the directions of the Act heréin. Copies of these papers will be found in Part II., ante.

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The Inclosure Commissioners shall also require, in the case of an application for inclosure, special information as to the advantages the applicants anticipate to be derivable from the inclosure of a common as compared with the regulation of a common, also the reasons why an inclosure is expedient when viewed in relation to the benefit of the neighbourhood:

- (5.) The information to be furnished as bearing on the expediency of the application considered in relation to private interests shall comprise statements as to the several particulars following ; that is to say, as to the extent and nature of the common to which the application relates ; as to the mines, minerals, or valuable strata (if any) under the same ; as to the questions of boundary (if any) concerning such common, or such mines, minerals, or strata ; as to the parties interested in such common, and the numbers and proportion in value of interest who have consented to or dissented from the application ; as to the nature of the rights requiring the intervention of the Inclosure Commissioners or the interference of Parliament ; as to the supposed advantages of the application being acceded to ; as to (in cases where the interest of any lord of the manor in the soil of a common or in mineral or other rights may be affected by the provisional order applied for) the allotment (if any) or compensation agreed on or proposed to be made to such lord of the manor in respect of his interest so affected ; and as to any other matter which in the judgment of the Inclosure Commissioners may assist them in forming an opinion as to whether such application ought to be acceded to, having regard to private interests, and if acceded to as to what provisions ought to be inserted in the provisional order for the protection of private interests :
- (6.) The Inclosure Commissioners shall take into consideration any application made to them as in this Act provided, and if satisfied by the information furnished to them as aforesaid, or by any further inquiries made by themselves or an Assistant Commissioner, that a *prima facie* case has been made out, and that, regard being had to the benefit of the neighbourhood as well as to private interests, it is expedient to proceed further in the matter, they shall order a local Inquiry to be held by an Assistant Commissioner.

**11. The following rules shall be observed with respect to a local inquiry held by order of the Inclosure Commissioners :**

- (1.) The Assistant Commissioner appointed to hold such inquiry shall inspect the common to which the application relates, and shall convene one or more public meetings at a suitable time and place for securing the attendance of the neighbouring inhabitants, and of all persons claiming interest in the common : Provided always, that one at least of such public meetings shall be held in the evening between the hours of 7 and 10 of the clock.
- (2.) The Assistant Commissioner shall give not less than 21 days notice of his intention to hold the first of such meetings.
- (3.) The notice shall, in such form as the Inclosure Commissioners from time to time direct, state the nature of the application made, the objects of the meeting, that the meeting is a public one and held for the purpose of enabling the Assistant Commissioner to hear all persons desirous of being heard on the subject matter of the application, whether considered in relation to the benefit of the neighbourhood or to private interests, and the desirability of the attendance of all persons interested in the subject matter of the inquiry.
- (4.) The notice shall be given—
- (a.) By affixing a copy thereof on the principal door of the church of the parish in which the common to which the application relates, or the greater part thereof is situate ; and
  - (b.) By posting copies of the same on or near the common to which it relates at the post office or post offices of the parish or district in which the common to which the application relates is situate, at any town hall, or vestry hall, or other building or room the expense of maintaining which is payable out of any local rate, situate in the parish or district, and at all places therein where notices are usually posted ; and
  - (c.) By advertising in such manner as the Inclosure Commissioners may direct, or otherwise giving notice of the meetings in such manner as they think best calculated to ensure publicity in the locality.
- (5.) The Assistant Commissioner shall preside and regulate the proceedings at

Evidence in relation to private interests.

Duty of Commissioners on application.

Rules as to local inquiry.

Inspection and public meeting.

Notice of meeting.

Contents of notice.

Publication of notice.

Conduct of meeting.

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Personal inquiries by Assistant Commissioner.

Report of Assistant Commissioner to Inclosure Commissioners.

Map to accompany report.

Rules as to provisional orders.

Draft provisional order to be framed.

Provisions for benefit of neighbourhood.

Provisions for protection of private interests.

Deposit of draft order for consideration of articles interred.

such meetings, and shall hear all persons desirous of being heard in relation to the subject matter of the inquiry. He may adjourn any such meeting from time to time, or from place to place, on giving such notice of adjournment as he thinks best calculated to ensure publicity.

- (6.) The Assistant Commissioner shall also make any inquiries and do any other acts which he may be instructed by the Inclosure Commissioners or may think it advisable to do, for the purpose of enabling the Commissioners to judge as to the expediency of making the provisional order applied for, also as to the nature of the provisions to be inserted in any such provisional order if made.
- (7.) The Assistant Commissioner shall report in writing to the Inclosure Commissioners the result of the local inquiry, and of the public meeting or meetings held by him (in such form and with such details as the Inclosure Commissioners may from time to time direct), and specially shall report to the Inclosure Commissioners the information obtained by him as to the several particulars in respect of which the applicants for a provisional order are by this Act required to furnish information to the Inclosure Commissioners. He shall also report the number of persons who attended the meetings held by him, the objections (if any) made to the application, and the suggestions (if any) made in relation to the provisions to be inserted in the provisional order for the benefit of the neighbourhood or for the protection of private interests, and any other circumstances which he may think expedient, with a view to enable the Inclosure Commissioners to judge of the expediency of making the provisional order, having regard as aforesaid, and also, if the order be made, of the provisions to be inserted therein.
- (8.) The report shall be accompanied by an outline or other map on such scale and of such a description as may be directed by the Inclosure Commissioners, with a sketch in the case of an inclosure of a common being waste of land of a manor, of the allotments (if any) proposed to be made for recreation grounds and field gardens, or for either of such purposes.

**12.** The following rules shall be observed with respect to provisional orders to be made by the Inclosure Commissioners; that is to say,

- (1.) The Inclosure Commissioners, if satisfied by the report of the Assistant Commissioner or by further inquiries to be made by themselves or an Assistant Commissioner, that, having regard to the benefit of the neighbourhood as well as to private interests, it is expedient to proceed further in the matter, shall frame, in such form and with such provisions as they, having regard as aforesaid, may think expedient, and as are consistent with law and the description of provisional order applied for, a draft provisional order for the consideration of the persons interested in the common, specifying, if such application is for the regulation of a common, whether all or any one or more of the provisions of this Act for the adjustment of rights and the improvement of a common are to be put in force:
- (2.) With respect to provisions for the benefit of the neighbourhood, there shall be inserted in such draft provisional order all such of the statutory provisions as defined by this Act for the benefit of the neighbourhood as are applicable to the case; also, if the order is an inclosure order in the case of a common being waste land of a manor, the quantity and situation of the allotments (if any) to be made for recreation grounds and field gardens:
- (3.) With respect to private interests, there shall be inserted in such draft provisional order, (1) where the interest of any lord of the manor in the soil of a common or in mineral or other rights may be affected by the order, a statement of the allotment (if any) or other compensation to be allotted or made to the lord of such manor in respect of his interest so affected; and (2) where there is any mineral property or other rights in relation thereto belonging to persons other than the lord of the manor which may be affected by the order, such provisions and reservations as are required to be inserted by the "Inclosure Acts, 1845 to 1868," or as may appear to the Inclosure Commissioners proper to be inserted; also, if there are any other rights which appear to the Commissioners proper to be specially provided for or to be excepted from the operation of the order, there shall be specified the provisions or exceptions to be made in that behalf:
- (4.) As soon as may be after making their draft provisional order, the Inclosure Commissioners shall cause a copy thereof to be deposited in the parish or parishes in which the common is situate to which such order relates, in order

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that the same may be considered by the parties interested therein, and they shall give notice, in such manner as they think best calculated to secure publicity, of such deposit having been made, and of their intention to certify the expediency of such order if the necessary consents are obtained thereto:

- (5.) The Inclosure Commissioners shall not certify the expediency of a draft provisional order unless they are satisfied that persons representing at least two-thirds in value of such interests in the common as are affected by the order consent thereto; and when the common to which the order relates is the waste land of any manor, or land within any manor to the soil of which the lord of such manor is entitled in right of his manor, then, unless there is more than one person interested in such manor according to the definition of the "Inclosure Act, 1845," the Commissioners shall not certify the expediency of the same, unless the person interested in the common in right of such manor, or his substitute under the said "Inclosure Act, 1845," consent to such order; and where there is more than one person interested in such manor the Commissioners shall not certify the expediency of the order, in case such persons or the majority of such persons in respect of interest signify their dissent within a time to be limited by the Commissioners:
- (6.) Where the freemen, burgesses, or inhabitant householders of any city, borough, or town are entitled to rights of common or other interest in the common to which the draft provisional order relates, the Inclosure Commissioners shall not certify the expediency of such order unless it appears to the Commissioners that two-thirds in number of such of the freemen and burgesses so entitled as may be resident in such city, borough, or town, or within seven miles thereof, or of such inhabitant householders, as the case may be, have consented to the order; and in case two-thirds in number of such resident freemen and burgesses, or of such inhabitant householders, have so consented, such consent shall be deemed the consent of the class of freemen, burgesses, or inhabitant householders, as the case may be, so entitled:
- (7.) The Inclosure Commissioners may cause a meeting or meetings to be held by an Assistant Commissioner for the purpose of obtaining the necessary consents, or of ascertaining the interests of consenting or dissenting parties, or they may cause such consents or dissents to be ascertained in such other manner as they may think fit:
- (8.) The Inclosure Commissioners may, at any time before certifying the expediency of a draft provisional order, modify the same of their own mere motion, or on the suggestion of any parties interested, but such modifications shall not be of any validity unless they are consented to in the same manner as if they formed part of the draft provisional order originally deposited by the Commissioners:
- (9.) When the necessary consents have been obtained to any draft provisional order as originally deposited, or as modified in pursuance of this Act, such order shall be deemed to be final; and the Inclosure Commissioners shall in a report or reports to be made from time to time, as respects each provisional order which has become final as aforesaid, certify that it is expedient that such provisional order should be confirmed by Parliament, together with their reasons for certifying such expediency, and specially, as respects each provisional order, they shall, in such manner as they think best adapted to enable Parliament to judge of the expediency of such order, state the information furnished to them as to the several particulars in respect of which the applicants for a provisional order are by this Act required to furnish information to the Commissioners; also the result of the local inquiry, and of the number and description of the persons who attended the meetings held during such inquiry, and the nature of the objections (if any) made to the application, and the suggestions (if any) made in relation to the provisions to be inserted for the benefit of the neighbourhood or for the protection of private interests by the persons so attending, and any other circumstances which the Commissioners may think it expedient to state for such purposes as aforesaid:
- (10.) Every report made by the Inclosure Commissioners certifying the expediency of any provisional order under this Act shall be presented to Parliament, and if at any time thereafter it is enacted by Act of Parliament that any order for the regulation or inclosure of a common, the expediency of which has been so certified by the Commissioners, shall be confirmed, the regulation or inclosure of any common to which any such order relates shall be proceeded

Consents before  
provisional  
order certified to  
be expedient.

Reservation in  
favour of  
freemen inter-  
ested in  
common.

Means of  
obtaining  
consents.

Power to modify  
provisional  
order before  
expediency  
certified.

Certificate of  
expediency of  
provisional  
order.

Confirmation of  
provisional  
order.

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with and completed according to the terms of the provisional order relating to such common, and to the provisions of the "Inclosure Acts, 1845 to 1868," as amended by this Act, and any Act of Parliament containing such enactments as aforesaid shall be deemed to be a public general Act, but a provisional order, until such Act of Parliament as aforesaid has been passed in relation thereto, shall not be of any validity whatever:

**Supplemental power to modify provisional order after expediency certified.**

- (11.) If, after the presentation to Parliament of a report made by the Inclosure Commissioners certifying the expediency of any provisional order for the regulation or inclosure of a common, and before a Bill has been brought in for the confirmation of such order, such report is referred to a committee of either House of Parliament for consideration, and such committee recommend that such provisional order should not be confirmed by Parliament except subject to certain modifications, the Inclosure Commissioners may modify the provisional order accordingly, but such modifications shall not be of any validity unless they are consented to in the same manner as if they had formed part of the draft provisional order originally deposited by the Commissioners:

And it shall be the duty of the Commissioners to take the necessary steps for ascertaining whether such consent as aforesaid can be obtained or not, and if such consent be obtained, the Commissioners shall make a special report to the effect that the order has been modified as aforesaid and such consent duly obtained, and such report shall be presented to Parliament; and thereupon the order so modified shall be deemed to be in the same position in all respects as if it were an order in respect of which a report had been made by the Commissioners certifying the expediency thereof, and such report had been presented to Parliament.

**Partial application of procedure under Inclosure Acts.**

13. The Inclosure Commissioners may insert in any provisional order for the regulation of a common any provisions they may deem necessary for the purpose of carrying such order into effect; but, subject as aforesaid, when an Act of Parliament has been passed as aforesaid, enacting that the regulation of a common shall be proceeded with, the subsequent proceedings for carrying into effect the regulation of such common shall be the same, so far as is practicable, as they would be in case such common were to be inclosed instead of being regulated, and the provisions of the "Inclosure Acts, 1845 to 1868," as amended by this Act, shall apply accordingly.

**Power to raise money for improvement of common.**

14. A provisional order for the regulation of a common may provide for the raising from time to time by such persons interested in the common, and for such amounts as the Commissioners think fit, of money to be applied towards the improvement or protection of such common, either by means of rates to be levied on the persons and in respect of the property who and which respectively will be benefited or principally benefited by such improvement or regulation, or by means of the sale of any outlying or other small portion not exceeding in the whole one-fortieth part of the total area of such common.

#### *Supplemental Provisions.*

**Owners may make by-laws.**

15. The majority in value of the owners of skirts or rights of pasture in any regulated pasture created under the provisions of the "General Inclosure Act, 1845," in addition to the powers they now possess are hereby authorised at any annual meeting for the election of field reeves to make by-laws and regulations for the prevention of or protection from nuisances or for keeping order on the regulated pasture, and for general management, occupation, and enjoyment of the regulated pasture, provided the consent of the lord of the manor is given to such by-laws.

**Provision as to by-laws.**

16. Any by-law made in pursuance of this Act, and any alteration made therein, and any revocation of a by-law, shall not be of any validity until it has been confirmed by one of Her Majesty's Principal Secretaries of State.

Pecuniary penalties (to be recovered summarily before any two justices) may be imposed by any such by-laws on persons breaking the same, provided that no penalty exceeds for any one offence the sum of 40s.

**Notice of application for confirmation of by-laws.**

17. No such confirmation shall take place unless notice of the intention to apply therefore, stating the effect of this section, has been published by the conservators one month at least before the application.

During one month at least before the application a copy of every by-law, the making, alteration, or revocation of which is submitted for confirmation, shall be kept

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at the office of the person or body of persons making, altering, or revoking such by-law open for inspection by persons interested; and such person or body of persons shall furnish a printed copy thereof to every person applying for the same on payment of a sum not exceeding one shilling for each copy.

**18.** Subject to the terms of the provisional order the amount of any compensation to be paid for any restriction, modification, or abolition of rights in pursuance of an order for the regulation of a common shall be deemed to be expenses of and incidental to the regulation of the common, and may be defrayed accordingly.

**19.** Whereas by several awards made under the authority of Inclosure Acts prior to the year 1845, fuel allotments for the poor have been set out and awarded, and vested in divers persons and bodies of persons as trustees of such allotments

And whereas under the provisions of the "Inclosure Acts, 1845 to 1868," and the several Acts of Parliament and awards made thereunder, allotments for recreation grounds and field gardens have been set out and awarded to the churchwardens and overseers of parishes and other persons :

And whereas power exists or is claimed under divers Acts of Parliament, to divert such allotments from the uses declared by Parliament respecting the same: Be it enacted, that after the passing of this Act, notwithstanding anything in any other Act contained, it shall not be lawful (save as herein-after mentioned) to authorise the use of or to use any such allotment, or any part thereof, for any other purpose than those declared concerning the same by the Act of Parliament and award, or either of them, under which the same has been set out: Provided, that it shall be lawful for the Charity Commissioners for England and Wales in the exercise of their ordinary jurisdiction under the Charitable Trusts Acts, upon the application of the trustees of any fuel allotment, to authorise the use of such fuel allotment as a recreation ground and field gardens, or for either of those purposes, and to make an order under the provisions of "The Charitable Trusts Act, 1860," for the establishment of a scheme for the administration of such fuel allotment accordingly; and provided, that it shall be lawful for the said Charity Commissioners, on such application as aforesaid, to authorise the exchange of any fuel allotment, or any part thereof, for land of equal value situate within the parish or district for the benefit of the poor of which such allotment was set out, if the Commissioners are of opinion that by means of such exchange land better suited for the purpose for which such allotment was set out will be obtained.

**20.** After the passing of this Act, where any common is regulated pursuant to this Act by a provisional order of the Inclosure Commissioners confirmed by Parliament, or is the subject of a scheme confirmed by Parliament under the provisions of "The Metropolitan Commons Act, 1866," or "The Metropolitan Commons Amendment Act, 1869," or (being situate within the metropolitan police district) is the subject of any private or local Act of Parliament having for its object the preservation of such common as an open space, no surveyor of highways or highway board constituted in pursuance of the "Highway Acts," or trustees of any turnpike road, shall search for, dig, get, or carry away gravel, sand, stone, or other materials in or from any part of such common which has not been set apart for that purpose with the sanction of Parliament, without the consent of the person or persons having the regulation or management of the same, or in default of such consent, without an order of two or more justices in petty sessions assembled, and acting in and for the petty sessional division in which such common is situate, who may in their order prescribe such conditions as to mode of working and restitution of the surface as to them shall seem expedient.

Gravel-digging.

## PART II.

### AMENDMENT OF THE INCLOSURE ACTS.

#### *Field Gardens and Recreation Grounds.*

**21.** Whereas it is expedient that the expenses of clearing any allotments made for field gardens may be included in the expenses of an inclosure: Be it enacted, that the valuer shall, unless the Inclosure Commissioners otherwise direct, cause every allotment made for a field garden to be cleared, drained, fenced, levelled, and otherwise made fit for immediate use and occupation; and the expenses incurred by the valuer under this section shall be paid as part of the general expenses of the inclosure.

Expenses of clearing, draining, and fencing field-gardens.

Provision as to certain expenses under order for regulation of a common.

Definition of power of Charity Commissioners in certain cases.

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Substituted allotments for recreation grounds and field gardens.

Situation of allotments for recreation grounds and field gardens.

Field gardens to be free of rent-charge.

Allotments for recreation grounds to be vested in churchwardens and overseers.

Amendment of law as to letting field gardens.

Application of surplus rents of recreation grounds and field gardens.

**22.** The provisions of the "Inclosure Acts, 1845 to 1868," which authorise the Inclosure Commissioners to allow an equal quantity of the land proposed to be inclosed to be allotted for the purpose of a recreation ground or field garden, or for any other public purpose, in lieu of that directed to be allotted by any provisional order, shall extend to authorise them to allow the allotment of land of equal value although it may not be of equal quantity.

**23.** Every allotment made for the purpose of a recreation ground or field garden shall be in such part of the land proposed to be inclosed as is best suited for the purpose for which it is appropriated, and where any land proposed to be inclosed consists partly of common being waste land of a manor (in this section referred to as the first-mentioned land), and partly of common not being waste land of a manor (in this section referred to as the second-mentioned land), and the Commissioners are satisfied that it would be advantageous that the allotment for a recreation ground or a field garden, or any part thereof, should be made out of the second-mentioned land instead of out of the first-mentioned land, the Commissioners may, in the provisional order relating to such land, specify as one of the terms and conditions of the inclosure thereof that the said allotments or the said part thereof shall be made accordingly out of the second-mentioned land, and shall out of the first-mentioned land allot land of equal value by way of exchange to the persons interested in the second-mentioned land.

**24.** There shall be repealed so much of the "Inclosure Acts, 1845 to 1868," as relates to the charging of an allotment made for the purpose of a field garden with a rentcharge, and every such allotment made after the passing of this Act shall be made free of any such rentcharge.

**25.** There shall be repealed so much of the "Inclosure Acts, 1845 to 1868," as provides that an allotment made for the purpose of a recreation ground may be allotted to any person entitled to an allotment under the inclosure, and every such allotment made after the passing of this Act shall be vested in the churchwardens and overseers for the time being of the parish in which the same shall be situate, and shall be held by them as provided by the "Inclosure Acts, 1845 to 1868."

**26.** Whereas by the "Inclosure Act, 1845," allotment wardens are required to let the allotments under their management to the poor inhabitants of the parish in gardens not exceeding a quarter of an acre, and are further required to demand in respect of such letting, a rent not below the full yearly value of the land to be ascertained in manner in the said Act mentioned; and whereas it is expedient to amend the said provisions: Be it enacted that allotment wardens, if they are unable to let the allotments under their management, or any portion thereof, to the poor inhabitants of the parish in gardens not exceeding a quarter of an acre, may let the same, or any unlet portion thereof, in gardens not exceeding an acre each to such inhabitants as aforesaid: Further, it shall be the duty of allotment wardens to offer the gardens under their management to the poor inhabitants of the parish at a fair agricultural rent, if from time to time sufficient to satisfy all rates, taxes, tithes, tithe rentcharge, and the rentcharge charged on the said allotments under the provisions of the "General Inclosure Act, 1845," but not otherwise, instead of at such rent as is required by the said Act. Moreover, if in any parish the allotment wardens are unable to let the allotments under their management, or any portion thereof, to the poor inhabitants of the parish in such quantities and at such rents as aforesaid, they may let the same, or such portion as may be unlet to any person whatever at the best annual rent which can be obtained for the same, without any premium or fine, and on such terms as may enable the allotment wardens to resume possession thereof within a period not exceeding 12 months, if it should at any time be required for such poor inhabitants as aforesaid.

This section shall apply to all land allotted to the poor for the purpose of cultivation under any Inclosure Act whatever, whether public or private, whether under the management of allotment wardens, feoffees, trustees, rector or vicar and churchwardens, overseers, managers, or any other person or persons whatever, and whether at present cultivated or uncultivated; so that all such persons as aforesaid shall have like powers and duties as are hereinbefore given to and imposed upon allotment wardens.

**27.** Whereas by section 73 of the "Inclosure Act, 1845," the surplus rents arising from recreation grounds are applicable in aid of the rates for the repair of the public highways in the parish or respective parishes in which the said grounds situate, and by section 112 of the same Act the surplus rents arising from

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field gardens are payable to the overseers of the poor in aid of the poor rates of the parish: And whereas it is expedient to amend the said provisions: Be it enacted, that the surplus rents arising from recreation grounds shall from and after the passing of this Act cease to be applied in manner provided by the said 73rd section, and shall be applied to all or any of the following purposes, and to no other purpose; that is to say, in improving the recreation grounds or any of them in the same parish or neighbourhood, or maintaining the drainage and fencing thereof, or in hiring or purchasing additional land for recreation grounds in the same parish or neighbourhood; and the surplus rents arising from field gardens shall, from and after the passing of this Act, cease to be applied in manner provided by the said 112th section, and shall be applied to all or any of the following purposes, and to no other purpose; that is to say, in improving the field gardens or any of them in the same parish or neighbourhood, or maintaining the drainage and fencing thereof, or in hiring or purchasing additional land for field gardens in the same parish or neighbourhood.

The trustees of any recreation ground and the allotment wardens of any field gardens may, with the approval of the Inclosure Commissioners, sell all or any part of the allotment vested in them, and out of the proceeds of such sale purchase any fit and suitable land in the same parish or neighbourhood: Provided, that the land so purchased shall be held in trust for the purposes for which the allotment so sold as aforesaid was allotted, and for no others; and provided, that the Inclosure Commissioners shall not sanction any such sale as aforesaid unless and until it shall be proved to their satisfaction that land more suitable for the purposes for which the allotment proposed to be sold was allotted may and will be forthwith purchased; and the proceeds of any such sale shall be paid to the Inclosure Commissioners, and shall remain in their hands until such purchase of other land as aforesaid.

**28.** The trustees of recreation grounds, where such trustees are the overseers or churchwardens of a parish, and the allotment wardens of field gardens shall, from time to time, and at such intervals of not less than 3 years nor more than 5 years, as the Inclosure Commissioners direct, make such reports to the said Commissioners in respect of the recreation grounds and field gardens under their management, with such particulars of the rents received by them, as the Commissioners may require.

Reports to be made by managers of recreation grounds and field gardens.

**29.** Whereas by the "Inclosure Act, 1857," provision is made for the protection of town and village greens, and recreation grounds, and it is expedient to amend such provision: Be it enacted as follows, that is to say, an encroachment on or inclosure of a town or village green, also any erection thereon or disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better enjoyment of such town or village green or recreation ground, shall be deemed to be a public nuisance, and if any person does any act in respect of which he is liable to pay damages or a penalty under section 12 of the said "Inclosure Act, 1857," he may be summarily convicted thereof upon the information of any inhabitant of the parish in which such town or village green or recreation ground is situate, as well as upon the information of such persons as in the said section mentioned.

Amendment of law as to town and village greens.

This section shall apply only in cases where a town or village green or recreation ground has a known and defined boundary.

**30.** A County Court within whose jurisdiction any common or part of a common is situate shall have jurisdiction to hear any case relating to any illegal inclosure or encroachment of or upon such common or part of a common respectively made after the passing of this Act, or to any nuisance impeding the exercise of any right of common arising after the passing of this Act, and to grant an injunction against such inclosure, encroachment, or nuisance, or to make an order for the removal or abatement of such inclosure, encroachment, or nuisance.

Jurisdiction of county court in respect of illegal inclosures.

Any person aggrieved by any injunction granted or order made or refusal to grant an injunction or make an order by a County Court in pursuance of this section may, on giving security for costs to the satisfaction of the County Court, appeal to the High Court of Justice in a summary manner, or by special case or otherwise, as may be prescribed by rules of court to be made by the Supreme Court of Judicature in manner provided by the 17th section of the "Supreme Court of Judicature Act, 1875."<sup>(a)</sup>

(a) See the Rules of Court issued under the authority of the Act in question.

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The appellate court may on hearing the appeal reverse, modify, or confirm the injunction or order complained of, or remit the case to the County Court from which the appeal lay, with instructions to deal with the case according to the directions given by the appellate court.

Where an appeal is lodged against the order of a County Court directing the removal or abatement of any inclosure, encroachment, or nuisance, such order shall be suspended during such time as such appeal is pending.

Nothing in this Act contained shall abridge or interfere with any existing right of abating or otherwise preventing any illegal inclosure or encroachment on any common, or any nuisance interfering with any right of common.

Until rules of court are made for the purposes of this section, an appeal may be had from the decision of any County Court under this section in the same manner in which an appeal from the decision of a County Court may be had in a case within its ordinary jurisdiction.

Three months notice of claim to inclose to be given in the local papers.

**31.** Any person intending to inclose or approve a common or part of a common otherwise than under the provisions of this Act shall give notice to all persons claiming any legal right in such common or part of a common, by publishing, at least 3 months beforehand, a statement of his intention to make such inclosure, for 3 successive times, and in two or more of the principal local newspapers in the county, town, or district in which the common or part of a common proposed to be inclosed is situate; but the provisions of this section shall not apply to any commons or waste lands whereon the rights of common are vested solely in the lord of the manor.

A production of a newspaper containing such advertisement as aforesaid shall be evidence of the same having been issued, and the inclosure shall, until the contrary is proved, be deemed to have taken place at the time specified in such advertisement.

Appointment of valuer to be confirmed by Commissioners.

**32.** An appointment of a valuer after the passing of this Act shall not be valid until it has been confirmed by the Commissioners. The Commissioners may disapprove of a valuer on the ground of his incompetency, interest, want of impartiality, or any reasonable cause, and where they so disapprove of a valuer may call a meeting, and a meeting may be held to appoint, and another person appointed (subject to the approval of the Commissioners) to be valuer in like manner as if no previous meeting had been held and no valuer had been previously appointed, and so on until a valuer approved by the Commissioners is appointed.

#### *General Amendment.*

Extension of § 105 of the "Inclosure Act, 1845," as to exchanges and partitions.

**33.** The provisions of section 105 of the "Inclosure Act, 1845," relating to the validity after confirmation of an award of inclosure of the exchanges, and partitions set forth in such award, shall apply to orders of exchange, partition, and division of intermixed lands carried into effect in pursuance of the "Inclosure Acts, 1845 to 1868," by separate orders, and not included in an award of inclosure.

### PART III.

#### *Miscellaneous.*

Repeal of certain parts of the "Inclosure Act, 1845," and amendment of law as to reports.

**34.** There shall be repealed so much of section 30 of the "Inclosure Act, 1845," as prescribes a limit to the quantity of land to be allotted to recreation grounds; also the 24th, 25th, 26th, and 27th sections of the "Inclosure Act, 1845," and the Inclosure Commissioners shall not be required to repeat, in their general annual report, any of the particulars in relation to the regulation or inclosure of commons which they may have stated in any other reports made by them in pursuance of this Act in relation to such commons, but they may refer to such other reports, or give a summary thereof, or otherwise deal with the same as may be thought expedient.

Act not to apply to metropolitan commons.

**35.** This Act, save as herein expressly provided, shall not apply to any metropolitan common within the meaning of the "Metropolitan Commons Acts, 1866 and 1869."

A common regulated not to be inclosed without ~~sanction~~.

**36.** Where an Act of Parliament has been passed confirming a provisional order under this Act for the regulation of a common, then, subject to and without prejudice to the provisions of that order, such common shall not, nor shall any part thereof, be inclosed without the sanction of Parliament subsequently obtained.

*Definitions.*

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- 37.** In this Act, unless the context otherwise requires,—  
 “A common” means any land subject to be inclosed under the “Inclosure Acts, 1845 to 1868.”
- “Waste land of a manor” means and includes any land consisting of waste land of any manor on which the tenants of such manor have rights of common, or of any land subject to any rights of common which may be exercised at all times of the year for cattle levant and couchant, or to any rights of common which may be exercised at all times of the year, and are not limited by number or stints:
- “Person” includes a body corporate:
- “Inclosure Acts, 1845 to 1868,” means the Acts mentioned in the schedule hereto, and each of the Acts mentioned in the said schedule may be cited by the short title in such schedule in that behalf mentioned; and the above mentioned Acts together with this Act may be cited as the “Inclosure Acts, 1845 to 1876”:
- “Municipal borough” means any place for the time being subject to the Act of the session of the 5th and 6th years of the reign of King William IV., chapter 76, intituled “An Act to provide for the regulation of municipal corporations in England and Wales,” and the Acts amending the same:
- “Improvement Act district” means any area subject to the jurisdiction of any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town:
- “Local Government district” has the same meaning as it has in the “Public Health Act, 1875.”

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## SCHEDULE.

Year and Chapter.	Title.	Short Title.
8 & 9 Vict. c. 118.	An Act to facilitate the inclosure and improvement of commons and lands held in common, the exchange of lands, and the division of intermixed lands ; to provide remedies for defective or incomplete executions, and for the non-execution of the powers of general and local Inclosure Acts, and to provide for the revival of such powers in certain cases.	The Inclosure Act, 1845.
9 & 10 Vict. c. 70.	An Act to amend the Act to facilitate the inclosure and improvement of commons.	The Inclosure Act, 1846.
10 & 11 Vict. c. 111.	An Act to extend the provisions of the Act for the Inclosure and improvement of Commons.	The Inclosure Act, 1847.
11 & 12 Vict. c. 99.	An Act to further extend the provisions of the Act for the inclosure and improvement of commons.	The Inclosure Act, 1848.
12 & 13 Vict. c. 83.	An Act further to facilitate the inclosure of commons and the improvement of commons and other lands.	The Inclosure Act, 1849.
14 & 15 Vict. c. 53.	An Act to consolidate and continue the Copyhold and Inclosure Commissions, and to provide for the completion of proceedings under the Tithe Commutation Acts.	The Inclosure Commissioners Act, 1851.
15 & 16 Vict. c. 79.	An Act to amend and further extend the Acts for the inclosure, exchange and improvement of land.	The Inclosure Act, 1852.
17 & 18 Vict. c. 97.	An Act to amend and extend the Acts for the inclosure, exchange, and improvement of land.	The Inclosure Act, 1854.
20 & 21 Vict. c. 31.	An Act to explain and amend the Inclosure Acts.	The Inclosure Act, 1857.
22 & 23 Vict. c. 43.	An Act to amend and extend the provisions of the Acts for the inclosure, exchange, and improvement of land.	The Inclosure Act, 1859.
31 & 32 Vict. c. 89.	An Act to alter certain provisions in the Acts for the commutation of tithes, the Copyhold Acts, and the Acts for the inclosure, exchange, and improvement of land, and to make provision towards the expense of the Copyhold, Inclosure and Tithe Office.	The Inclosure, &c., Expenses Act, 1868.



40 &amp; 41 VICT., C. 35.

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**An Act for affording Facilities for the enjoyment  
by the Public of Open Spaces in the Metropolis.  
(2nd August, 1877.)**

WHEREAS it is expedient to afford facilities for making available the open spaces in and near the metropolis for the use of the inhabitants for exercise and recreation, and to enable the Metropolitan Board of Works to acquire the control and management of such open spaces for such purposes:

Be it enacted, &c.

1. The Metropolitan Board of Works may, by purchase on voluntary sale, or by the gift of the person or persons legally entitled to dispose of the same, acquire or accept the ownership of any open spaces, whether inclosed within rails or palings, or uninclosed, situated in the metropolis, and hold the same in trust for the perpetual use thereof by the public for exercise and recreation, and may from time to time make by-laws for the regulation of such open spaces, and may by such by-laws provide for the removal of any person infringing any such by-law by any officer of the said Board or police constable. By-laws under this section shall be made in the same manner and subject to the same conditions as by-laws made by the said Board under the "Metropolis Management Act, 1855."

Metropolitan Board of Works may acquire and hold open spaces for benefit of public.

2. Where any open spaces now are or hereafter may be used as places of exercise and recreation for the inhabitants of certain houses, and the property and right of user is now or hereafter may be vested in one or more persons as owners or occupiers of such houses, such owners and occupiers (if any) may convey to the Metropolitan Board of Works, in trust for the public, the right to enter upon and use and enjoy such open spaces, subject to such terms and conditions as may be agreed upon.

Right of entry to places of recreation may be conveyed to Metropolitan Board of Works.

3. The Metropolitan Board of Works shall be entitled to make such provision as may be necessary for maintaining and protecting the open spaces so acquired by them.

Provision for keeping up open spaces.

4. The Metropolitan Board of Works shall be empowered to pay out of the funds at their disposal or which they are empowered to raise under the said "Metropolis Management Act, 1855," and the several Acts amending the same, the costs and charges which they may incur in the execution of this Act, and such costs and charges shall be deemed to be expenses for which provision is made by such Acts.

Expenses.

5. This Act shall not extend to the royal parks, nor to any land belonging to Her Majesty in right of Her Crown or of Her Duchy of Lancaster, or any garden, ornamental ground, or ornamental land for the time being under the management of the Commissioners for the time being of Her Majesty's Works and Public Buildings or of the Commissioners for the time being acting under the "Crown Estate Paving Act, 1851," or to any Metropolitan Common within the meaning of the "Metropolitan Commons Act, 1866," and the "Metropolitan Commons Amendment Act, 1869," nor to any land belonging to either of the honourable societies of the Inner Temple and Middle Temple.

Extent of Act.

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Meaning of term  
"Metropolis."

**6.** The term "Metropolis" in this Act means all parishes and places mentioned in Schedules A., B., and C. to the said "Metropolis Management Act, 1855."

Provisions as to  
the City of  
London.

**7.** The powers in this Act conferred on the Metropolitan Board of Works shall in the city of London be exercised by the Mayor, Aldermen, and Commons of the said city, who shall defray all the expenses caused by or connected with the execution of such powers.

Short Title.

**8.** This Act may be cited as the "Metropolitan Open Spaces Act, 1877."

## PART V.

### Digest of Cases.

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1859.

- A. G. v. Southampton Corporation.*—Local Act—Ground devoted to Recreation purposes—Injunction granted to restrain the Corporation from using such ground for the purposes of a Cattle Fair. (29 L. J., Ch., 282: 1 Giff., 363: 1 L. T., 155.) [1]

1876.

- A. G. v. Sunderland Corporation.*—“Public Health Act, 1848,” § 73—Land vested in Corporation for Public Pleasure-Ground—Injunction granted to restrain the use of a part for erection of town offices, etc.—Conservatory, museum, and library allowed. (45 L. J., Ch.D., 839: L. R., 2 Ch.D., 634: 34 L. T., 921: 40 J. P., 564.) [2]

1872.

- Forbes v. Ecclesiastical Commissioners.*—51 Geo. III. 115, § 2—Manorial Rights—“Village Green”—Grant of part of such a green to be used as a Burial Ground set aside—The Act does not empower the Lord of the Manor to discharge commonable lands from common or customary rights not strictly manorial, e.g., the rights of Parishioners to their village green. (42 L. J., Ch., 97: L. R., 15 Eq., 51: 27 L. T., 511.) [3]

1868.

- Richmond Union v. St. Paul's, Dean and Chapter of.*—“Nuisances Removal Act, 1855,” § 12—Pond which had become a nuisance on a Common managed by Conservators appointed by the copyhold jury and tenants, with the assent of the Lord or the Court Baron—Respondents held not liable, because not the parties by whose act, default, permission, or sufferance, the nuisance arose. (18 L. T., 522: 32 J. P., 374.) [4]

1872.

- Telford v. Metropolitan Board of Works.*—“Metropolitan Commons Act, 1866.”—Sale of Common to Board with a stipulation that if not devoted to the public, free of buildings, within a certain time Vendor might re-purchase his share—Promotion by Board of a Scheme to sell or let a portion on building leases—Injunction granted against the Board proceeding with the Scheme. (41 L. J., Ch., 589: L. R., 13 Eq., 574: 26 L. T., 150.) [5]

1864.

- Tepper v. Nichols.*—Local Bridge Act—*Per* Erle, C. J.—“Where land is vested in Commissioners by an Act of Parliament for public purposes the Commissioners have not, unless there be something in the statute to that effect, any power to convey away and part with such land.” (34 L. J., C. P., 61: 18 C. B. (n.s.), 121: 11 L. T., 509.) [6]

1868.

- Tulk v. Metropolitan Board of Works.*—“Gardens in Towns Protection Act, 1863.”—Intention of Act—Leicester-square, London—Act only applies where land has been vested in Trustees or irrevocably dedicated—Therefore in the case in question, on the facts proved, the Board which had presumed to take possession of the ground were guilty of a trespass. (37 L. J., Q. B., 272: L. R., 3 Q. B., 682: 8 B. & S., 777: 19 L. T., 18.) [7]

1875.

- Wimbledon and Putney Commons Conservators v. Dixon.*—There may be a right of way across a common without any one track in particular being adhered to, provided that the *terminus a quo* and the *terminus ad quem* are known. (45 L. J., Ch., 353: L. R., 1 Ch.D., 362: 33 L. T., 679: 40 J. P., 102.) [8]

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